



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

HARVARD LAW LIBRARY



3 2044 053 483 541

7  
RR  
1/11/41



HARVARD LAW LIBRARY

---

Received MAY 17 1962













# MARYLAND DIGEST ANNOTATED

COVERING ALL REPORTED AND MANY UNREPORTED  
DECISIONS

FROM

1 HARRIS AND McHENRY TO 121 MARYLAND  
(122 and 123 Md. in part—see Preface, Volume 1.)

UNDER THE AMERICAN DIGEST CLASSIFICATION

A KEY-NUMBERED INDEX TO ALL  
OF THE CASE LAW OF THE APPELLATE  
COURTS OF THE UNITED STATES

J. MERCER GARNETT and SAMUEL WANT,  
Editors.

D. LIST WARNER,  
Associate Editor.

## VOLUME 5.

o FALSE PRETENSES—INTERDICTION

BALTIMORE  
M. CURLANDER  
LAW BOOKSELLER, PUBLISHER AND IMPORTER  
1917

COPYRIGHT, 1917,  
J. MERCER GARNETT.

NOV 15 1921

LRR

PRESS OF  
BALTIMORE CITY PRINTING AND BINDING COMPANY,  
BALTIMORE, MD.

TO THE LAW SCHOOL  
OF THE  
UNIVERSITY OF MARYLAND  
THIS WORK IS  
RESPECTFULLY DEDICATED,  
BY PERMISSION



## ABBREVIATIONS USED IN THIS DIGEST.

### MARYLAND REPORTS.

H. & McH.....	Harris & McHenry.
H. & J.....	Harris & Johnson.
H. & G.....	Harris & Gill.
G. & J.....	Gill & Johnson.
Gill .....	Gill.
Bland .....	Bland's Chancery Decisions.
Md. Ch.....	Maryland Chancery Decisions.
Md. ....	Maryland Reports.

### OTHER ABBREVIATIONS.

Am. Dec.....	American Decisions.
Am. Rep.....	American Reports.
Am. St. Rep.....	American State Reports.
Ann. Cas.....	American, or American and English, Annotated Cases.
Atl. ....	Atlantic Reporter.
B. R. C.....	British Ruling Cases.
L. R. A.....	Lawyers Reports Annotated.
L. R. A. (N. S.).....	Lawyers Reports Annotated, New Series.

## LIST OF TITLES IN THIS VOLUME.

(Main titles are in large type; cross-reference titles in italics.)

<b>FALSE PRETENSES.</b>	<i>Feme Covert.</i>	<i>Fireworks.</i>
<i>False Representations.</i>	<i>Feme Sole.</i>	<i>Firms.</i>
<i>False Return.</i>	<b>FENCES.</b>	<i>Fiscal Court.</i>
<i>False Swearing.</i>	<i>Fence Viewers.</i>	<i>Fiscal Management.</i>
<i>False Token.</i>	<i>Feoffment.</i>	<b>FISH.</b>
<i>False Weights and Measures.</i>	<i>Feras Naturae.</i>	<i>Fishing Bill.</i>
<i>Falsi Crimen.</i>	<i>Fermented Liquors.</i>	<i>Fissure Vein.</i>
<i>Falsifying.</i>	<i>Ferrets.</i>	<i>Fixed Damages.</i>
<i>Falsus In Uno, Falsus In Omnibus.</i>	<i>Ferriage.</i>	<b>FIXTURES.</b>
<i>Family.</i>	<b>FERRIES.</b>	<i>Flagmen.</i>
<i>Family Agreement or Settlement.</i>	<i>Ferryboats.</i>	<i>Flags.</i>
<i>Family Bible.</i>	<i>Fertilizers.</i>	<i>Flat Car.</i>
<i>Family Expenses.</i>	<i>Fetters.</i>	<i>Flats.</i>
<i>Family Meeting.</i>	<i>Fiancee.</i>	<i>Flight.</i>
<i>Family Records.</i>	<i>Fictitious Actions.</i>	<i>Floatable Streams.</i>
<i>Family Reputation.</i>	<i>Fictitious Claims.</i>	<i>Floatage.</i>
<i>Family Settlements.</i>	<i>Fictitious Names.</i>	<i>Floating Debt.</i>
<i>Fans.</i>	<i>Fictitious Person.</i>	<i>Floats.</i>
<i>Fares.</i>	<i>Fidei Commissum.</i>	<i>Flogging.</i>
<i>Farm Crossings.</i>	<i>Fidelity Insurance.</i>	<i>Flooding Lands.</i>
<i>Farmers.</i>	<i>Fiduciary Relations.</i>	<i>Floods.</i>
<i>Farmers' Union.</i>	<i>Field Notes.</i>	<i>Flowage.</i>
<i>Farming Lands.</i>	<i>Fieri Facias.</i>	<i>Flumes.</i>
<i>Farming on Shares.</i>	<i>Fighting.</i>	<i>Flying Jenny.</i>
<i>Farm Products.</i>	<i>Figures.</i>	<i>Flying Switch.</i>
<i>Farms.</i>	<i>Filiation.</i>	<i>Foal Getter.</i>
<i>Faro.</i>	<i>Filing.</i>	<i>F. O. B.</i>
<i>Fast Bills of Exceptions.</i>	<i>Filius Nullius.</i>	<i>Fosticide.</i>
<i>Fast Writ of Error.</i>	<i>Filling Blanks.</i>	<i>Fog.</i>
<i>Father.</i>	<i>Filth.</i>	<i>Following Trust Property.</i>
<i>Fault.</i>	<i>Filteration Plants.</i>	<b>FOOD.</b>
<i>Favor.</i>	<i>Filum Aquae.</i>	<i>Food and Drugs Act.</i>
<i>Fear.</i>	<i>Filum Viae.</i>	<i>Football.</i>
<i>Federal Courts.</i>	<i>Final Accounts.</i>	<i>Footpath.</i>
<i>Federal Employers' Liability Act.</i>	<i>Final Hearing.</i>	<i>Footprints.</i>
<i>Federal Government.</i>	<i>Final Judgments and Decrees.</i>	<i>Forbearance.</i>
<i>Federal Officers.</i>	<i>Final Process.</i>	<i>Force.</i>
<i>Federal Procedure.</i>	<i>Financial Condition.</i>	<i>Forced Heirs.</i>
<i>Federal Questions.</i>	<i>Finder of Property.</i>	<i>Forced Marriage.</i>
<i>Federal Safety Appliance Act.</i>	<b>FINDING LOST GOODS.</b>	<i>Forced Sale.</i>
<i>Fees Bills.</i>	<i>Findings.</i>	<i>Forcible Defilement.</i>
<i>Fees.</i>	<b>FINES.</b>	<b>FORCIBLE ENTRY AND DETAINER.</b>
<i>Fee Simple.</i>	<i>Finger Prints.</i>	<i>Forcible Trespass.</i>
<i>Fee Tail.</i>	<i>Firearms.</i>	<i>Ford.</i>
<i>Feigned Action.</i>	<i>Fire Boats.</i>	<i>Foreclosure.</i>
<i>Feigned Issues.</i>	<i>Fire Department.</i>	<i>Foreign Acknowledgment.</i>
<i>Fellow Servants.</i>	<i>Fire District.</i>	<i>Foreign Administration.</i>
<i>Feloniously.</i>	<i>Fire Escapes.</i>	<i>Foreign Assignments.</i>
<i>Felony.</i>	<i>Fire Insurance.</i>	<i>Foreign Associations.</i>
<i>Females.</i>	<i>Fire Limits.</i>	<i>Foreign Attachment.</i>
	<i>Fire Line.</i>	<i>Foreign Banks.</i>
	<i>Fireman.</i>	<i>Foreign Bills.</i>
	<i>Firemen's Relief Association.</i>	<i>Foreign Bills of Exchange.</i>
	<b>FIRES.</b>	<i>Foreign Cars.</i>

*Foreign Charities.*  
*Foreign Commerce.*  
*Foreign Contracts.*  
*Foreign Corporations.*  
*Foreign Countries.*  
*Foreign Courts.*  
*Foreign Divorce.*  
*Foreigners.*  
*Foreign Executors and Administrators.*  
*Foreign Governments.*  
*Foreign Guardianship.*  
*Foreign Insurance Companies.*  
*Foreign Judgments.*  
*Foreign Jury.*  
*Foreign Language.*  
*Foreign Laws.*  
*Foreign Minister.*  
*Foreign Missions.*  
*Foreign Money.*  
*Foreign Patents.*  
*Foreign Receiverships.*  
*Foreign Trade-Marks and Trade-Names.*  
*Foreign Vessels.*  
*Foreign Wills.*  
*Foreman.*  
*Foreshore.*  
*Foresight.*  
*Forests.*  
**FORFEITURES.**  
**FORGERY.**  
*Formal Defects and Errors.*  
*Formal Parties.*  
*Forma Pauperis.*  
*Formedon.*  
*Former Action Pending.*  
*Former Adjudication.*  
*Former Jeopardy.*  
*Forms and Actions.*  
**FORNICATION.**  
*Forswearing.*  
*Forthcoming Bonds.*  
*Forts and Military Posts.*  
*Fortuitous Event.*  
*Fortune Tellers.*  
*Forum.*  
*Forwarders.*  
*Foundlings.*  
*Fountains.*  
*Four Corners.*  
*Fourteenth Amendment.*  
*Fourth of July.*  
*Fowls.*  
*Fox Hunting.*  
*Fractions.*  
**FRANCHISES.**  
*Fraternal Associations.*

**Fraternities.**  
**FRAUD.**  
*Fraud Orders.*  
**FRAUDS, STATUTE OF.**  
**FRAUDULENT CONVEYANCES.**  
*Fraudulent Preferences.*  
*Fraudulent Removal.*  
*Fraudulent Representations.*  
*Fraudulent Sales.*  
*Fray.*  
*Freedmen.*  
*Freedom.*  
*Freedom of Speech and of the Press.*  
*Free Fishery.*  
*Free Goods.*  
*Freehold.*  
*Freeholders.*  
*Free List.*  
*Freemasons.*  
*Freezing.*  
*Freight.*  
*Freight Bill.*  
*Freight Car.*  
*Freight Trains.*  
*French Grants.*  
*French Spoliation Claims.*  
*Frequenting.*  
*Freshets.*  
*Friendly Societies.*  
*Friendly Suit.*  
*Friend of the Court.*  
*Fright.*  
*Frivolous Action.*  
*Frivolous Appeal.*  
*Frivolous Pleading.*  
*Frogs.*  
*Frontage Tax.*  
*Front-Foot Rule.*  
*Fructus Industriales.*  
*Fruit.*  
*Fruit Trees.*  
*Fuel Yards.*  
*Fuero.*  
*Fugitive.*  
*Fugitive from Justice.*  
*Full Age.*  
*Full Blood.*  
*Full Court.*  
*Full Crew Act.*  
*Full Faith and Credit.*  
*Fundamental Questions.*  
*Funding.*  
*Funds.*  
*Funeral Benefits.*  
*Funeral Directors.*  
*Funeral Expenses.*  
*Funerals.*

**Furniture.**  
**Further Appeal.**  
**Further Assurance.**  
**Further Hearing.**  
*Future Advances.*  
*Future Earnings.*  
*Future Estates.*  
*Futures.*  
*Gage.*  
*Gambling.*  
**GAME.**  
*Games.*  
**GAMING.**  
*Ganancial Property.*  
*Gangplank.*  
*Gaol.*  
*Gaol Liberties or Limits.*  
*Garages.*  
*Garbage.*  
*Garden.*  
**GARNISHMENT.**  
**GAS.**  
*Gasoline.*  
*Gasoline Boats.*  
*Gas Meters.*  
*Gas Ranges.*  
*Gas Wells.*  
*Gates.*  
*Gauger.*  
*Geese.*  
*Gelding.*  
*Genealogy.*  
*General Acts.*  
*General Agent.*  
*General Appearance.*  
*General Average.*  
*General Bequests and Devises.*  
*General Challenge.*  
*General Damages.*  
*General Demurrer.*  
*General Denial.*  
*General Deposits.*  
*General Exceptions.*  
*General Guaranty.*  
*General Issue.*  
*General Land Office.*  
*General Laws.*  
*General Legacies.*  
*General Letter of Credit.*  
*General Manager.*  
*General Objections.*  
*General Orders.*  
*General Receivers.*  
*General Reputation.*  
*General Restraint of Trade.*  
*General Rules.*  
*General Statutes.*  
*General Terms.*

*General Traverse.*  
*General Usage.*  
*General Verdict.*  
*General Warranty.*  
*Geographical Facts.*  
*Geography.*  
*German Empire.*  
*German Language.*  
*Gerrymander.*  
*Gestation.*  
*Gestures.*  
*Gift Enterprise.*  
**GIFTS.**  
*Glanders.*  
*Glass.*  
*Goats.*  
*Gold.*  
*Gondola Cars.*  
*Good Behavior.*  
*Good Character.*  
*Good Consideration.*  
*Good Faith.*  
*Goods.*  
*Good Time.*  
*Good Title.*  
**GOOD WILL.**  
*Gospel.*  
*Government.*  
*Government Ownership.*  
*Governor.*  
*Grabiron.*  
*Grace, Days of.*  
*Grade.*  
*Grade Crossings.*  
*Graded Schools.*  
*Grading Contracts.*  
*Graduation.*  
*Graft.*  
*Grain.*  
*Grammar.*  
*Grandchildren.*  
*Grand Inquest.*  
**GRAND JURY.**  
*Grand Larceny.*  
*Grand List.*  
*Grandparents.*  
*Grand Stand.*  
*Granges.*  
*Grants.*  
*Grass.*  
*Grass Blade.*  
*Gratuities.*  
*Gravel Pits.*  
*Gravel Roads.*  
*Graves.*  
*Gravestones.*  
*Graveyards.*  
*Grease.*  
*Great Lakes.*

*Great Ponds.*  
*Greek Letter Fraternities.*  
*Greenbacks.*  
*Gristmills.*  
*Groceries.*  
*Gross Adventure.*  
*Gross Average.*  
*Gross Earnings.*  
*Gross Negligence.*  
*Gross Ton.*  
*Ground of Action.*  
**GROUND RENTS.**  
*Grouse.*  
*Growing Crops.*  
*Guaranteed Stock.*  
**GUARANTY.**  
*Guaranty Insurance.*  
*Guardian Ad Litem.*  
**GUARDIAN AND WARD.**  
*Guard Rails.*  
*Guards.*  
*Guests.*  
*Guideboards.*  
*Guideposts.*  
*Guilty.*  
*Gun.*  
*Gunpowder.*  
*Gutters.*  
**HABEAS CORPUS.**  
*Habendum.*  
*Habere Facias Possessionem.*  
*Habitable Repair.*  
*Habitation.*  
*Habit Forming Drugs.*  
*Habits.*  
*Habitual Criminals.*  
*Habitual Drunkards.*  
*Hackmen.*  
*Hail Insurance.*  
*Half Blood.*  
*Half Holiday.*  
*Half Pilotage.*  
*Hallucination.*  
*Hallways.*  
*Hamlets.*  
*Hand Cars.*  
*Handcuffs.*  
*Handhold.*  
*Handwriting.*  
*Hanging.*  
*Happiness.*  
*Harbor Commissioners.*  
*Harboring.*  
*Harbor Master.*  
*Harbors.*  
*Hard Labor.*  
*Harmless Error.*  
*Harter Act.*  
*Harvester.*

*Haste.*  
*Hawaii.*  
**HAWKERS AND PED-  
DLERS.**  
*Hay.*  
*Haystacks.*  
*Hazard.*  
*Hazing.*  
*Head Money.*  
*Headnotes.*  
*Head of Family.*  
*Headright.*  
*Healers.*  
**HEALTH.**  
*Health Insurance.*  
*Hearing.*  
*Hearsay.*  
*Hearsay Evidence.*  
*Heat.*  
*Heat of Passion.*  
*Hedges.*  
*Heirlooms.*  
*Heirs.*  
*Helpless Persons.*  
*Herbage.*  
*Herd Laws.*  
*Hereditaments.*  
*Hereditary Insanity.*  
*Hernia.*  
*Hidden Dangers.*  
*Hides.*  
*Highest Bidders.*  
*Highroads.*  
*High Schools.*  
*High Seas.*  
*High-Water Mark.*  
*Highway Commissioners.*  
*Highway Crossings.*  
*Highway Robbery.*  
**HIGHWAYS.**  
*Hindering Creditors.*  
*Hindering Officer.*  
*Hiring.*  
*History.*  
*Hogs.*  
*Hoistways.*  
*Holders.*  
*Holding Companies.*  
*Holding Out.*  
*Holding Over.*  
**HOLIDAYS.**  
*Holographic Wills.*  
*Home.*  
*Home for Friendless.*  
**HOMESTEAD.**  
**HOMICIDE.**  
*Homologation.*  
*Honesty.*  
*Honor.*

*Honorarium.*  
*Horse Racing.*  
*Horse Railroads.*  
*Horses.*  
*Horse-Shoers.*  
*Horse Theft.*  
*Horse Trainers.*  
*Horticulture.*  
**HOSPITALS.**  
*Hostile Possession.*  
*Hostile Witness.*  
*Hostilities.*  
*Hotchpot.*  
*Hotels.*  
*Hot Springs Reservation.*  
*Hours.*  
*Hours of Labor.*  
*House.*  
*House Boats.*  
*Housebreaking.*  
*House Burning.*  
*Householders.*  
*Household Expenses.*  
*Household Goods.*  
*Housekeeper.*  
*House of Correction.*  
*House of Entertainment.*  
*House of Ill Fame.*  
*House of Refuge.*  
*Human Being.*  
*Humane Societies.*  
*Humanitarian Doctrine.*  
*Hung Jury.*  
*Hunting.*  
**HUSBAND AND WIFE.**  
*Husbandry.*  
*Husband, Ship's.*  
*Hush Money.*  
*Hydrant Rentals.*  
*Hydrophobia.*  
*Hypnotism.*  
*Hypothecary Action.*  
*Hypothecation.*  
*Hypothetical Questions.*  
*Hypothetical Statements.*  
*Hysteria.*  
*Ice.*  
*Ice Cream.*  
*Ideas.*  
*Idem Sonans.*  
*Identification.*  
*Identity.*  
*Idiot.*  
*Idle Persons.*  
*Ignorance.*  
*Illegal Contracts.*  
*Illegal Fees.*  
*Illegal Gaming.*  
*Illegality.*

*Illegal Imprisonment.*  
*Illegal Marriage.*  
*Illegal Sales.*  
*Illegal Transaction.*  
*Illegal Voyage.*  
*Illegitimate Children.*  
*Ill Fame.*  
*Illicit Cohabitation.*  
*Illicit Relations.*  
*Illness.*  
*Ill Repute.*  
*Illuminating Gas.*  
*Illuminating Oils.*  
*Illusion.*  
*Illusory Appointment.*  
*Imbecility.*  
*Imitation.*  
*Immaterial Averments.*  
*Immaterial Issue.*  
*Immemorial Usage.*  
*Immigration.*  
*Immorality.*  
*Immovables.*  
*Immunity.*  
*Impairing Obligation of Contract.*  
*Impanelling Jury.*  
*Impeachment.*  
*Impeding Justice.*  
*Impeding Navigation.*  
*Imperative Statutes.*  
*Impertinence.*  
*Implements.*  
*Implication.*  
*Implied Authority.*  
*Implied Consideration.*  
*Implied Contracts.*  
*Implied Covenants.*  
*Implied Dispositions.*  
*Implied Grants.*  
*Implied Invitation.*  
*Implied Licenses.*  
*Implied Malice.*  
*Implied Repeal.*  
*Implied Trusts.*  
*Implied Warranty.*  
*Importers.*  
*Imports.*  
*Importunity.*  
*Imposition.*  
*Impossible Consideration.*  
*Impositor.*  
*Imposts.*  
*Impotency.*  
*Impounding.*  
*Impression.*  
*Imprisonment.*  
*Imprisonment at Hard Labor.*  
*Improvement Certificates.*

**IMPROVEMENTS.**  
*Improvvidence.*  
*Imputed Negligence.*  
*Inadequate Damages.*  
*Inadequate Price.*  
*Inadvertence.*  
*In Camera.*  
*Incapacity.*  
*Incendiarism.*  
**INCEST.**  
*Inchoate Dower.*  
*Inchoate Rights.*  
*Incitement.*  
*Inclosure.*  
*Income.*  
*Income Tax.*  
*Incompatibility.*  
*Incompetency.*  
*Incompetent Persons.*  
*Inconsistency.*  
*Incontinence.*  
*Inconvenience.*  
*Incorporation.*  
*Incorporeal Hereditaments.*  
*Incorporeal Property.*  
*Incorrigible Children.*  
*Increase.*  
*Incrimination.*  
*Incumbent.*  
*Incumbrances.*  
*In Custodia Legis.*  
*Indebitatus Assumpsit.*  
*Indebtedness.*  
*Indecency.*  
*Indecent Assault.*  
*Indecent Exposure.*  
*Indecent Pictures.*  
*Indecent Proposal.*  
*Indecent Publications.*  
**INDEMNITY.**  
*Indemnity Insurance.*  
*Indentures.*  
*Independent Contractors.*  
*Independent Covenants.*  
*Independent Stipulations.*  
*Independent Wills.*  
*Indeterminate Sentences.*  
*Index.*  
**INDIANS.**  
*Indian Territory.*  
**INDICTMENT AND INFORMATION.**  
*Indifferent Jurors.*  
*Indigent Persons.*  
*Indignities.*  
*Indirect Evidence.*  
*Indirect Taxation.*  
*Indispensable Parties.*  
*Indisputable Presumptions.*

*Indisputable Title.*  
*Indivisible Contracts.*  
*Indorsement.*  
*Inducement.*  
*Indulgence.*  
*Industrial Schools.*  
*Inebriate Asylums.*  
*Inebriates.*  
*Inevitable Accident.*  
*Infamous Crimes.*  
*Infamous Punishment.*  
*Infanticide.*  
**INFANTS.**  
*Infectious Diseases.*  
*Inferences.*  
*Inferior Courts.*  
*Infidels.*  
*Infirmaries.*  
*Infirmity.*  
*Inflamable Materials.*  
*Influence.*  
*Informalities.*  
*In Forma Pauperis.*  
*Information.*  
*Information and Belief.*  
*Informers.*  
*Infringement.*  
*Inhabitancy.*  
*Inhabitants.*

*Inheritance.*  
*Inheritance Tax.*  
*Initials.*  
*Initiative and Referendum.*  
**INJUNCTION.**  
*Injuria Sine Damno.*  
*Injuries.*  
*Injurious Words.*  
*Ink.*  
*Inland Bills of Exchange.*  
**INNKEEPERS.**  
*Innocence.*  
*Innocent Purchaser.*  
*Innuendo.*  
*In Nullo Est Erratum.*  
*Inofficious Wills.*  
*In Pais.*  
*In Pari Delicto.*  
*In Personam.*  
*Inquest.*  
*Inquiry, Writ of.*  
*Inquisition.*  
*In Rem.*  
*Insane Asylums.*  
*Insane Delusions.*  
*Insane Hospitals.*  
**INSANE PERSONS.**  
*Insanity.*  
*Insects.*

**INSOLVENCY.**  
*Insolvency Courts.*  
*Insolvent Traders' Act.*  
**INSPECTION.**  
*Inspectors.*  
*Installments.*  
*Instigation.*  
*Institutes.*  
*Institution.*  
*Institutions.*  
*Instructions.*  
*Instruments.*  
*Insubordination.*  
*Insufficiency.*  
*Insulation.*  
*Insulting Gestures.*  
*Insulting Language.*  
*Insurable Interest.*  
**INSURANCE.**  
*Insurance Commissioners.*  
*Insurgents.*  
**INSURRECTION.**  
*Intellectual Property.*  
*Intemperance.*  
*Intending.*  
*Intent.*  
*Intentionally.*  
*Intercourse.*  
*Interdiction.*





## FALSE PRETENSES.\*

*Scope-Note.*

[INCLUDES fraudulently obtaining or attempting to obtain from another personal property, or the making or indorsement by him of a negotiable instrument, or the execution of any instrument in writing, or any benefit or advantage, by false tokens or representations; nature and elements of the crimes of cheating, swindling, obtaining money or goods by false pretenses, larceny by false pretenses, etc.; nature and extent of criminal responsibility therefor, and grounds of defense; and prosecution and punishment of such acts as public offenses.

[EXCLUDES fraud not involving use of false tokens or representations (see "*Fraud*"); personation of another (see "*False Personation*"); forgery of instruments in writing, and uttering such forged instruments (see "*Forgery*"); making, passing, etc., counterfeit coin or other money, securities, etc (see "*Counterfeiting*"); and obtaining board or lodging with intent not to pay therefor (see "*Innkeepers*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature of offense in general.
- § 2. Statutory provisions.
- § 3. Elements of offenses.
- § 4. — In general.
- § 5. — Intent.
- § 6. — False token.
- § 7. — Nature of pretense.
- § 8. — Falsity of pretense and knowledge thereof.
- § 9. — Reliance on pretense and inducement to act.
- § 10. — Persons who may rely on representations.
- § 11. — Nature of property, right, or benefit obtained.
- § 12. — Parting with right of property or possession.
- § 13. — Procuring written instrument or signature.
- § 14. — Injury from fraud.
- § 15. False pretenses as to particular subject-matters.
- § 16. Obtaining money or property by trick or device or confidence game.
- § 17. Cheating or fraudulent practices in sports or games.
- § 18. Fraudulent presentation of claim to public officer.
- § 19. False personation of officer or another person.
- § 20. Acts constituting other offense.
- § 21. Attempts.
- § 22. Defenses.
- § 23. Persons liable.
- § 24. Venue.
- § 25. Indictment or information.
- § 26. — Requisites and sufficiency in general.
- § 27. — Intent.
- § 28. — Description of person defrauded.
- § 29. — Description of false token or pretense or other instrument or means of fraud.

---

\*Annotation: Words and Phrases, same title.

- § 30. — Falsity of pretense and knowledge thereof.
- § 31. — Reliance on pretense and inducement to act.
- § 32. — Description, value, and ownership of property obtained.
- § 33. — Description of written instrument or signature obtained.
- § 34. — Obtaining money, property, or written instrument, or signature.
- § 35. — False personation of officer or another person.
- § 36. — Injury from fraud.
- § 37. — Presentation of fraudulent claim.
- § 38. — Issues, proof, and variance.
- § 39. Presumptions and burden of proof.
- § 40. Admissibility of evidence.
- § 41. — In general.
- § 42. — Intent.
- § 43. — False token or pretense, or other instrument or means.
- § 44. — Falsity of pretense or claim and knowledge thereof.
- § 45. — Description, value, and ownership of property.
- § 46. — Parting with and obtaining money, property, or written instrument.
- § 47. — Incriminating circumstances.
- § 48. — Matters of defense.
- § 49. Weight and sufficiency of evidence.
- § 50. Trial.
- § 51. — Questions for jury.
- § 52. — Instructions.
- § 53. — Verdict.
- § 54. Sentence and punishment.

#### *Cross-References.*

- |   |   |
|---|---|
| <p>As grounds of civil action, see "Action," § 5.</p> <p>Conspiracy to cheat by false pretenses, see "Conspiracy," § 32.</p> <p>Constitutional guaranty against imprisonment for debt, see "Constitutional Law," § 83.</p> <p>Decision on appeal directing judgment or sentence in lower court, see "Criminal Law," § 1188.</p> <p>Distinguished from larceny, see "Larceny," § 22.</p> <p>Distinguished from robbery, see "Robbery," § 7.</p> <p>English statute as part of common law, see "Common Law," § 11.</p> <p>False personation for purpose other than obtaining goods or money, see "False Personation."</p> <p>Former jeopardy, see "Criminal Law," §§ 189, 200.</p> <p>Fraud constituting criminal offense not involving false pretense or representation, see "Fraud," §§ 68, 69.</p> <p>Fraudulent breach of contract to perform services, see "Master and Servant," § 67.</p> | <p>Grounds for new trial in general, see "Criminal Law," §§ 919, 925½.</p> <p>Harmless error, see "Criminal Law," § 1163.</p> <p>Jurisdiction, see "Criminal Law," §§ 93, 95, 97.</p> <p>Larceny by trick or device, see "Larceny," § 14.</p> <p>Libelous imputation of crime, see "Libel and Slander," § 7.</p> <p>Limitation of prosecutions, see "Criminal Law," §§ 147, 149.</p> <p>Making or presentation of false claim against United States as distinct offense, see "United States," §§ 121-123.</p> <p>Malicious prosecution, see "Malicious Prosecution," § 18.</p> <p>Merger of offenses, see "Criminal Law," § 30.</p> <p>Objections in lower court for purpose of review, see "Criminal Law," § 1064.</p> <p>Pleas, see "Criminal Law," § 300.</p> <p>Reversal on appeal, see "Criminal Law," § 1186.</p> <p>Subject and title of act relating to, see "Statutes," § 118.</p> |
|---|---|

**§ 1. Nature of offense in general.****Annotation.**

Requisites and essentials of offense.—10 L. R. A. 302, 303, 304, 305, note.  
False pretenses as distinguished from theft.—10 L. R. A. 303, note.

**§ 2. Statutory provisions.****Cross-Reference.**

Subject and title of act, see "Statutes," § 118.

**§§ 3-14. Elements of offenses.****Cross-References.**

Admissibility of evidence, see post, §§ 40-48.  
Indictment and information, see post, §§ 25-38.  
Weight and sufficiency of evidence, see post, § 49.

**Annotation.**

Obtaining property by check with intent to stop payment as false pretenses.—41 L. R. A. (N. S.) 170, note.  
Giving post-dated check as false pretense.—41 L. R. A. (N. S.) 173, note.  
Illegal intent of prosecutor as affecting guilt in obtaining property by false pretense or confidence game.—17 L. R. A. (N. S.) 276; 39 L. R. A. (N. S.) 423, notes.  
Purpose of applying property on debt as affecting larceny or substantive offense of obtaining property by false pretenses.—32 L. R. A. (N. S.) 420, note.  
Mere drawing of check on a bank in which the drawer has no funds or credit, and passing the same as false pretenses.—17 L. R. A. (N. S.) 244; 27 L. R. A. (N. S.) 1032, notes.  
Obtaining money as a charity by false representations.—24 L. R. A. (N. S.) 575, note.  
Corpus delicti in false pretenses.—19 L. R. A. (N. S.) 443, note.  
Effecting a sale of property through false representation of value.—14 L. R. A. (N. S.) 1197, note.  
Necessity of actual deception of the person from whom money or property is obtained where such person is not the owner, but an agent or officer of the owner, of the property.—11 L. R. A. (N. S.) 938, note.  
Effect of coupling future promise with false pretenses.—7 L. R. A. (N. S.) 278, note.  
Reliance on false pretenses as an element of the offense.—6 L. R. A. (N. S.) 365, note.  
Offense as affected by the absurdity or improbability of representations, or by the prosecutor's failure to investigate the same.—6 L. R. A. (N. S.) 369, note.  
Instigation to false pretenses.—25 L. R. A. 345, note.  
False pretenses by false representation of condition, character, or status.—10 L. R. A. 304, note.

False pretenses by false tokens.—10 L. R. A. 304, 309, note.

False statement of agency as false pretenses.—10 L. R. A. 308, note.

(a) Where the only representations made by a buyer to his vendor as to his financial condition are furnished by a mercantile agency, it must be clearly shown that the buyer made the statement to the agency with the fraudulent intent to use such agency as an instrument for defrauding the vendor or some other dealer, in order to justify criminal proceedings against him.—*Blum v. State*, 94 Md. 375, 51 Atl. 26, 56 L. R. A. 322.

(b) A false representation by one that he has supernatural power to cure is as to an existing fact, and is not impaired by making simultaneously a promise to exercise the alleged power in the future.—*Jules v. State*, 85 Md. 305, 36 Atl. 1027. [Cited and annotated in 35 L. R. A. 435, on expression of opinion as fraud; in 7 L. R. A. (N. S.) 279, on effect of coupling future promise with false pretenses.]

**§ 15. False pretense as to particular subject-matters.****Annotation.**

Obtaining dog by false pretenses.—40 L. R. A. 514, note.  
Property subject to false pretenses.—10 L. R. A. 303, note.

**§§ 16-18. (See Analysis.)****§ 19. False personation of officer or another person.****Cross-References.**

Admissibility of evidence, see post, § 46.  
Indictment and information, see post, § 35.

**Annotation.**

False personation as false pretenses.—10 L. R. A. 308, note.

**§ 20. Acts constituting other offense.****§ 21. Attempts.****Cross-References.**

Questions for jury, see post, § 51.  
Felony or misdemeanor, see "Criminal Law," § 27.

**§ 22. Defenses.****Cross-Reference.**

Credulity or folly of victim no defense, see ante, § 9.

**Annotation.**

Illegal purpose of person defrauded as a defense.—13 L. R. A. 753, note.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 23. Persons liable.

#### Cross-References.

Issues, proof, and variance, see post, § 38.  
Prosecution and punishment of principals and accessories, see "Criminal Law," § 81.

#### Annotation.

Infant inducing another to enter into contract with him by representing that he is of age.—24 L. R. A. (N. S.) 1101, note.

Criminal liability of infant for false pretenses.—36 L. R. A. 203, note.

(a) Slaves are liable to indictment under act 1835, c. 319, relating to the obtaining of goods by false pretenses, equally with white persons.—*Hammond v. State*, 14 Md. 135. (See Code, [vol. 3], art. 27, § 122.)

### § 24. Venue.

#### Cross-References.

Change of venue for local prejudice, see "Criminal Law," § 134.

Locality of offense, see "Criminal Law," § 108.

Offenses in several counties, see "Criminal Law," § 112.

### §§ 25-38. Indictment or information.

#### Cross-References.

Averments as to acts constituting offense, see "Indictment and Information," § 95.  
Averments as to felonious character of act, see "Indictment and Information," § 91.

Bill of particulars, see "Indictment and Information," § 121.

Certainty, see "Indictment and Information," § 71.

Demurrer, see "Indictment and Information," § 147.

Duplicity, see "Indictment and Information," § 125.

Joinder of counts, see "Indictment and Information," § 129.

Joinder of parties, see "Indictment and Information," § 124.

Language of statute, see "Indictment and Information," § 110.

Preliminary proceedings, see "Indictment and Information," § 41.

Record, see "Indictment and Information," § 11.

Repugnancy, see "Indictment and Information," § 73.

Statutory requirements, see "Indictment and Information," §§ 19, 57.

Successive indictments, see "Indictment and Information," § 15.

Sufficiency of averments as to place of offense, see "Indictment and Information," § 86.

Sufficiency to support extradition, see "Extradition," § 32.

Waiver of objections, see "Indictment and Information," § 196.

#### Annotation.

Necessity and sufficiency of description of offense in bail bond or recognizance.—38 L. R. A. (N. S.) 316, note.

(a) Where defendant was charged with obtaining by false pretenses "\$1,800 current money," proof of obtaining the money by means of a check, which defendant deposited in the bank and drew the proceeds, was not a fatal variance.—*Schaumloeffel v. State*, 102 Md. 470, 62 Atl. 803.

(b) Evidence that defendant owned real estate is inadmissible, where the statement on which it is alleged he obtained the goods was that he had money in a certain bank.—*Carnell v. State*, 85 Md. 1, 36 Atl. 117. [Cited and annotated in 62 L. R. A. 224, on evidence of other crimes in criminal cases.]

(c) In support of a charge that defendant falsely pretended to have extraordinary and supernatural powers to cure, evidence was admissible that defendant told prosecutor to write his name and age on a paper without letting defendant see the writing; that defendant folded the paper, and placed it against his forehead, and told prosecutor what he had written, and then said that prosecutor suffered from a certain trouble, and that he (defendant) could and would cure him, and gave defendant a charm to wear, which he said was essential to the treatment.—*Jules v. State*, 85 Md. 305, 36 Atl. 1027. [Cited and annotated in 35 L. R. A. 435, on expression of opinion as fraud; in 7 L. R. A. (N. S.) 279, on effect of coupling future promise with false pretenses.]

(d) Code 1888, art. 27, § 291, providing that, in an indictment for obtaining any chattel, money, or valuable security by false pretenses, it is sufficient to allege that defendant did the act with intent to defraud, without alleging his intent to have been to defraud any particular person, and that it is sufficient to describe the instrument by any designation by which it is usually known, or by its purport, relates only to the manner of alleging the facts and bringing them in the record, but does not dispense with the necessity for their averment.—*State v. Blizard*, 70 Md. 385, 17 Atl. 270, 14 Am. St. Rep. 366. (See Code 1911 [vol. 3], art. 27, § 501.)

(e) Under Code 1888, art. 27, § 288, providing that in an indictment for false pre-

tenses it shall not be necessary to state the particular false pretense to be relied on in proof, but defendant, on application to the state's attorney, shall be entitled to a statement thereof, and of the names of the witnesses, such an indictment is not demurrable for failure to set out the false pretenses intended to be relied on.—*State v. Blizzard*, 70 Md. 385, 17 Atl. 270, 14 Am. St. Rep. 366. (See Code 1911, art. 27, § 498.)

(f) An indictment for obtaining goods on false pretenses must allege the ownership of such goods.—*State v. Blizzard*, 70 Md. 385, 17 Atl. 270, 14 Am. St. Rep. 366.

### § 39. Presumptions and burden of proof.

### § 40. Admissibility of evidence.

#### Cross-References.

Acts and declarations of conspirators and codefendants, see "Criminal Law," §§ 423, 424.

Admissions, see "Criminal Law," § 406.

Best and secondary evidence, see "Criminal Law," § 400.

Character of accused, see "Criminal Law," § 379.

Declarations, see "Criminal Law," § 417.

Documentary evidence, see "Criminal Law," §§ 430, 432, 433, 442.

Opinion evidence, see "Criminal Law," § 450.

Other offenses, see "Criminal Law," §§ 369, 372-374.

Privilege of accused as to production of documents, see "Witnesses," § 298.

Relevancy of evidence in prosecution for obtaining money by false pretenses, see "Criminal Law," § 338.

Res gestæ, see "Criminal Law," §§ 363, 365.

### § 41.— In general.

#### Annotation.

Competency of prosecuting witness to testify that he was induced to part with his property by defendant's statements.—34 L. R. A. (N. S.) 642, note.

Evidence of other crimes in prosecution for false pretenses.—62 L. R. A. 222, 240, 323, note.

Evidence admissible to prove charge.—10 L. R. A. 307, note.

### § 42.— Intent.

### § 43.— False token or pretense, or other instrument or means.

(a) Where, on a prosecution for false pretenses whereby worthless stock was sold to prosecutor, it appeared that one of defendants, at the time of sale by the other de-

fendant, had agreed to take some of the stock, and it was claimed that such agreement was a part of the scheme to mislead prosecutor, it was proper to admit evidence tending to show the worthlessness of the certificate of deposit given by the defendant in payment for the stock purchased by him.—*Lawrence v. State*, 103 Md. 17, 63 Atl. 96. [Cited and annotated in 8 L. R. A. (N. S.) 764, on admissibility of documents or articles taken from defendant.]

(b) Where, on a prosecution for false pretenses whereby worthless stock was sold to prosecutor, it appeared that defendant, at the time of the sale, stated that he only had the amount of stock which he was selling, and that he had inherited it, it was proper to admit evidence showing that he subsequently had in his possession other shares which he was carrying around carelessly in a satchel.—*Lawrence v. State*, 103 Md. 17, 63 Atl. 96. [Cited and annotated, see supra.]

(c) On a prosecution for false pretenses, whereby worthless stock was sold to prosecutor, evidence that one of the defendants, in the presence of prosecutor, agreed to buy shares of the same stock from the defendant who sold the stock, was admissible, as showing a scheme of fraud.—*Lawrence v. State*, 103 Md. 17, 63 Atl. 96. [Cited and annotated, see supra.]

(d) In a trial for obtaining goods under false pretenses, a paper taken from defendant is admissible to show that defendant had devised a scheme to obtain goods whenever and from whomsoever he could, the paper being in his own handwriting, and addressed "to all whom it may concern," and containing the same false statements charged in the indictment, though it was not used in obtaining the goods in the particular case, and is dated later.—*Carnell v. State*, 85 Md. 1, 36 Atl. 117. [Cited and annotated in 62 L. R. A. 224, on evidence of other crimes in criminal cases.]

### § 44.— Falsity of pretense or claim and knowledge thereof.

#### Cross-Reference.

Other offenses, see "Criminal Law," §§ 369, 370.

(a) In the prosecution of the president of a distilling company for false pretenses in using a duplicated distillery warehouse re-



ceipt in obtaining a loan for the company, the issue being as to defendant's guilty knowledge of the duplication, evidence that eight months after the duplication defendant had refused the proposal of a bank to lend money provided the receipts were certified, while not relating to the particular transaction, was proper; there being evidence of other duplications about the time of the proposal as showing a general guilty knowledge.—*Gambrill v. State*, 120 Md. 203, 87 Atl. 900.

(b) In such case evidence of another outstanding duplication was properly admitted, though the receipt was issued by the vice-president; it having been done by the defendant's instructions.—*Gambrill v. State*, 120 Md. 203, 87 Atl. 900.

(c) In such case it was error for the court, after admitting evidence for the state that at the time of the duplication the company was in a necessitous condition, to refuse to admit evidence for defendant that the company at the time of the duplication was in a sound financial condition and had in its warehouse a large quantity of whisky for which no receipts had been issued.—*Gambrill v. State*, 120 Md. 203, 87 Atl. 900.

(d) It was also error to exclude evidence for defendant as to the difficulty of ascertaining from the books of the company whether warehouse receipts were duplicated or not.—*Gambrill v. State*, 120 Md. 203, 87 Atl. 900.

(e) Under such circumstances, evidence of the state of defendant's account with the company two years after the duplication was properly excluded as irrelevant.—*Gambrill v. State*, 120 Md. 203, 87 Atl. 900.

(f) In such case evidence that defendant had stated in a conversation in reference to another transaction that he would be criminally liable if he permitted the receipts to be duplicated was admissible.—*Gambrill v. State*, 120 Md. 203, 87 Atl. 900.

(g) In such case evidence by a former director of the company that he had resigned because he did not like the management of the company, without stating in what respect he did not like the management, was irrelevant.—*Gambrill v. State*, 120 Md. 203, 87 Atl. 900.

(h) To show guilty knowledge, in a trial

for obtaining goods under false pretenses, a paper taken from defendant's person is admissible, if it is in his own handwriting, and contains the same false statements as are set out in the indictment, though it was not used in obtaining the goods in the particular case, and was dated later.—*Carnell v. State*, 85 Md. 1, 36 Atl. 117. [Cited and annotated, see *supra*, § 43.]

§ 45.—Description, value, and ownership of property.

§ 46.—Parting with and obtaining money, property, or written instrument.

§ 47.—Incriminating circumstances.

(a) In a prosecution of storekeepers for obtaining goods by false pretenses, where it appeared that relatives of the defendants were running similar stores, testimony was admissible to show that quantities of goods bought by defendants shortly before the appointment of receivers, and not paid for, were removed from their store to the other stores, and sold below cost.—*Blum v. State*, 94 Md. 375, 51 Atl. 26, 56 L. R. A. 322.

§ 48.—Matters of defense.

§ 49.—Weight and sufficiency of evidence.

*Cross-References.*

Instructions as to corroborating evidence, see post, § 52.  
Confessions, see "Criminal Law," § 535.

§ 50.—Trial.

*Cross-References.*

Argument of counsel, see "Criminal Law," § 730.  
Election between acts, see "Criminal Law," § 678.  
Rebuttal evidence, see "Criminal Law," § 683.  
Remarks of judge, see "Criminal Law," § 656.  
Service of list of witnesses, see "Criminal Law," § 629.  
Striking out evidence, see "Criminal Law," § 696.

§ 51.—Questions for jury.

*Cross-References.*

Assumption as to facts, see "Criminal Law," § 761.  
Instructions as to circumstantial evidence, see "Criminal Law," §§ 763, 764.  
Instructions on weight of evidence, see "Criminal Law," §§ 763, 764.  
Opinion of judge as to facts, see "Criminal Law," § 762.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

## § 52.—Instructions.

### *Cross-References.*

- Circumstantial evidence, see "Criminal Law," § 784.
- Construction of charge as a whole, see "Criminal Law," § 822.
- Definition of fraud, see "Criminal Law," § 800.
- Doubts of individual juror, see "Criminal Law," § 798.
- Excluding evidence from consideration, see "Criminal Law," § 783½.
- Limiting effect of evidence, see "Criminal Law," § 673.
- Repetition, see "Criminal Law," § 806.

## § 53.—Verdict.

## § 54. Sentence and punishment.

### *Annotation.*

- Cruel and unusual punishment of crime of false pretenses.—35 L. R. A. 571, note.
- Punishment for false pretenses.—10 L. R. A. 307, note.

## FALSE REPRESENTATIONS.\*

### *Cross-References.*

- See "False Pretenses"; "Fraud."
- Affecting notice and proof of loss under insurance policy, see "Insurance," § 552.
- Affecting right to specific performance, see "Specific Performance," § 53.
- Affecting validity of assignment of mortgage, see "Mortgages," § 239.
- Affecting validity of bill or note, see "Bills and Notes," § 103.
- Affecting validity of bond, see "Bonds," § 40.
- Affecting validity of composition with creditors, see "Compositions with Creditors," § 11.
- Affecting validity of contract in general, see "Contracts," § 94.
- Affecting validity of contract of sale, see "Sales," §§ 37-47; "Vendor and Purchaser," §§ 33-38.
- Affecting validity of contract of suretyship, see "Principal and Surety," §§ 39, 41.
- Affecting validity of deed, see "Deeds," § 70.
- Affecting validity of guaranty, see "Guaranty," § 20.
- Affecting validity of insurance policy, see "Insurance," §§ 250-301, 371-401.
- Affecting validity of mortgage, see "Chattel Mortgages," § 72; "Mortgages," § 78.
- Affecting validity of release, see "Release," § 17.
- Affecting validity of subscription, see "Subscriptions," § 8.
- Application of statute of frauds, see "Frauds, Statute of," §§ 37-42.
- As to stock of building and loan associations, see "Building and Loan Associations," § 8.

By plaintiff as defense to action for infringement of trade-mark or for unfair competition, see "Trade-Marks and Trade-Names," § 85.

By seller of goods distinguished from warranty, see "Sales," § 251.

Ground for rescission of contract of sale, see "Sales," § 114; "Vendor and Purchaser," §§ 90, 108.

Inducing purchase of stock, see "Corporations," § 317.

Rescission of contract by act of party as a remedy, see "Contracts," § 259.

## FALSE RETURN.\*

### *Cross-References.*

Liability of sheriff for making false return of process, see "Sheriffs and Constables," § 124.

Of property for taxation, see "Taxation," § 335½.

## FALSE SWEARING.\*

### *Cross-References.*

See "Perjury."

Falsus in uno, falsus in omnibus, see "Witnesses," § 317.

Ground for collateral attack on judgment, see "Judgment," § 512.

Ground for equitable relief against judgment, see "Judgment," § 444.

Ground for opening or vacating judgment, see "Judgment," § 376.

In application for insurance, see "Insurance," § 262.

In notice and proof of loss under insurance policy, see "Insurance," § 553.

Instructions as to false swearing, see "Criminal Law," §§ 785, 786; "Trial," §§ 187, 210, 236.

## FALSE TOKEN.\*

### *Cross-Reference.*

See "False Pretenses."

## FALSE WEIGHTS AND MEASURES.\*

### *Cross-Reference.*

See "Weights and Measures," § 10.

## FALSI CRIMEN.

### *Cross-References.*

See "Counterfeiting"; "Forgery"; "Perjury"; "Weights and Measures."

## FALSIFYING.\*

### *Cross-References.*

Accounts of assignee for creditors, see "Assignments for Benefit of Creditors," §§ 395, 398, 406.

Accounts of executor or administrator, see "Executors and Administrators," §§ 509, 516.

Accounts of guardian, see "Guardian and Ward," §§ 160, 182.

Accounts of guardian of insane persons, see "Insane Persons," § 42.

Accounts of partnership, see "Partnership," § 348.

\*Annotation: Words and Phrases, same title.

Accounts of receiver, see "Receivers," § 202.

Accounts of trustee in bankruptcy, see "Bankruptcy," §§ 369, 372.

Accounts of trustee in general, see "Trusts," §§ 324, 328, 333.

Accounts of trustee or assignee in insolvency, see "Insolvency," § 133.

Accounts stated, see "Account Stated," § 12.

Burden of proof to falsify settled account, see "Account Stated," § 19.

Liability of officer for falsely certifying acknowledgment, see "Acknowledgement," § 48.

Records, see "Records," § 10.

### **FALSUS IN UNO, FALSUS IN OMNIBUS.\***

#### *Cross-References.*

See "Witnesses," § 317.

Instructions as to false swearing, see "Criminal Law," §§ 785, 786; "Trial," §§ 187, 210, 236.

### **FAMILY.\***

#### *Cross-References.*

In general, see "Husband and Wife"; "Parent and Child."

Designation in will, see "Wills," § 501.

Evidence of pedigree, birth and relationship, see "Evidence," §§ 285-288, 290-297.

Homestead, see "Homestead."

Imputation of negligence as between members of family, see "Negligence," § 89.

Injury caused by libel, see "Libel and Slander," § 124.

Persons entitled to property by descent, see "Descent and Distribution," §§ 20-67.

Services rendered between persons in family relation, see "Executors and Administrators," § 206; "Work and Labor," § 7.

Transactions between persons in family relation, fraudulent as to creditors, see "Fraudulent Conveyances," §§ 102, 104-107.

### **FAMILY AGREEMENT OR SETTLEMENT.\***

#### *Cross-References.*

In general, see "Compromise and Settlement," § 6.

Between devisees and legatees, see "Wills," § 740.

Between heirs and distributees, see "Descent and Distribution," § 82.

Partition agreements, see "Partition," § 4.

Validity as to creditors, see "Fraudulent Conveyances," § 97.

### **FAMILY BIBLE.**

#### *Cross-Reference.*

Evidence as to pedigree and relationship, see "Evidence," § 287.

### **FAMILY EXPENSES.\***

#### *Cross-Reference.*

Liabilities of husband and wife, see "Husband and Wife," § 19.

### **FAMILY MEETING.\***

#### *Cross-References.*

Appointment of tutor, see "Guardian and Ward," § 9.

In proceedings for sale of property of infants, see "Infants," § 39.

Ratification of partition sale, see "Partition," § 25.

Recommendation of partition, see "Partition," § 14.

To recommend person to appointment as curator of interdict, see "Insane Persons," § 39.

### **FAMILY RECORDS.**

#### *Cross-Reference.*

As evidence of pedigree, birth or relationship, see "Evidence," § 287.

### **FAMILY REPUTATION.**

#### *Cross-Reference.*

As evidence of pedigree, birth or relationship, see "Evidence," § 288.

### **FAMILY SETTLEMENTS.\***

#### *Cross-References.*

See "Wills," § 740.

Consideration of settlement between parties interested in will, see "Wills," § 212.

### **FANS.\***

#### *Cross-Reference.*

Liability of master for injuries to servant caused by unguarded exhaust fan, see "Master and Servant," § 153.

### **FARES.\***

#### *Cross-Reference.*

For carriage of passengers, see "Carriers," §§ 239, 248½-261, 355-358.

### **FARM CROSSINGS.\***

#### *Cross-Reference.*

Accidents at crossings, see "Railroads," §§ 100-102, 299, 303.

### **FARMERS.\***

#### *Cross-Reference.*

As peddlers, see "Hawkers and Peddlers," § 3.

### **FARMERS' UNION.**

#### *Cross-Reference.*

See "Agriculture," § 6.

### **FARMING LANDS.\***

#### *Cross-References.*

See "Landlord and Tenant," §§ 135-139, 319-333.

Homestead, see "Homestead," §§ 58-71.

\*Annotation: Words and Phrases, same title.

**FARMING ON SHARES.***Cross-References.*

See "Landlord and Tenant," §§ 319-333.  
Criminal responsibility for fraudulent breach of contract, see "Master and Servant," § 67.

**FARM PRODUCTS.\****Cross-Reference.*

License taxes on dealers in farm products, see "Licenses," § 16.

**FARMS.\****Cross-References.*

Leases, see "Landlord and Tenant," §§ 135-139.  
Poor farm, see "Paupers," § 9.

**FARO.\****Cross-Reference.*

See "Gaming," § 68.

**FAST BILLS OF EXCEPTIONS.***Cross-References.*

See "Appeal and Error," § 350; "Mandamus," § 187.

**FAST WRIT OF ERROR.***Cross-Reference.*

See "Appeal and Error," §§ 350, 812.

**FATHER.\****Cross-References.*

See "Bastards"; "Parent and Child."  
Adoption of child, see "Adoption."  
As guardian, see "Guardian and Ward."

**FAULT.\****Cross-References.*

See "Negligence."  
As cause of collision, see "Collision."

**FAVOR.\****Cross-References.*

Challenge for favor, see "Grand Jury," § 18; "Jury," §§ 122-133.

**FEAR.\****Cross-References.*

See "Extortion"; "Threats."  
Duress affecting validity of transactions or contracts, see "Appeal and Error," § 158; "Assignments," § 64; "Bills and Notes," §§ 104, 374, 438; "Cancellation of Instruments," § 37; "Carriers," § 218; "Chattel Mortgages," §§ 72, 79; "Compromise and Settlement," § 8; "Contracts," § 95; "Criminal Law," §§ 522, 865; "Deeds," § 71; "Divorce," § 18; "Evidence," § 203; "Fines," § 19; "Guaranty," § 20; "Homestead," § 118; "Insurance," § 603; "Landlord and Tenant," §§ 27, 231; "Limitation of Actions," § 97; "Marriage," § 35; "Municipal Corporations," § 159; "Payment,"

§ 87; "Pleading," § 8; "Principal and Surety," § 43; "Rape," § 11; "Release," § 18; "Torts," § 17; "Trial," § 314; "Trusts," § 50.

Homicide under fear, see "Homicide," § 116.

Robbery by putting in fear, see "Robbery," § 7.

**FEDERAL COURTS.***Cross-References.*

See "Courts," §§ 255-470, 489-509, 518-526.

Removal of causes to, see "Removal of Causes."

**FEDERAL EMPLOYERS' LIABILITY ACT.***Cross-References.*

See "Action," § 48; "Commerce," §§ 8, 27; "Death," § 72; "Dismissal and Non-suit," § 58; "Evidence," § 558; "Master and Servant," §§ 87, 101, 102, 179, 204, 250, 265, 267, 276, 285, 348; "Negligence," § 101; "Pleading," §§ 180, 403.

**FEDERAL GOVERNMENT.***Cross-Reference.*

See "United States."

**FEDERAL OFFICERS.***Cross-References.*

In general, see "United States"; "Ambassadors and Consuls"; "Army and Navy"; "Attorney General"; "District and Prosecuting Attorneys"; "United States Commissioners"; "United States Marshals."

Customs officers, see "Customs Duties," §§ 53-60.

Internal revenue officers, see "Internal Revenue," § 22.

Land officers, see "Public Lands," §§ 94-109.

Officers of post office department, see "Post Office," §§ 1-12.

**FEDERAL PROCEDURE.***Cross-References.*

In general, see "Courts," §§ 255-470; "Criminal Law," §§ 83-105.

Conflicting jurisdiction and comity, see "Courts," §§ 489-509, 518-526.

In admiralty courts, see "Admiralty"; "Collision"; "Maritime Liens"; "Salvage"; "Seamen"; "Shipping"; "Towage."

Removal of cause from state to federal court, see "Removal of Causes."

Removal of person accused of crime to another district for trial, see "Criminal Law," § 242.

**FEDERAL QUESTIONS.\****Cross-References.*

Appellate jurisdiction of state courts of cases involving federal questions, see "Courts," § 231.

\*Annotation: Words and Phrases, same title.

Grounds for jurisdiction, see "Courts," §§ 281-299.

Grounds for removal of cause, see "Removal of Causes," §§ 18-25.

## FEDERAL SAFETY APPLIANCE ACT.

### Cross-References.

See "Commerce," § 27; "Master and Servant," § 111.

## FEE BILLS.\*

### Cross-References.

See "Costs," § 147.

Revival of action to recover back fee bill illegally charged, see "Abatement and Revival," § 71.

## FEES.\*

### Cross-References.

Adoption of state practice by federal courts as to allowance of fees, see "Courts," § 357.

Affirmance on remission of fees, see "Appeal and Error," § 1140.

Allowance by trial court, review of discretion, see "Appeal and Error," § 984.

Allowance of counsel fees as costs in admiralty, see "Admiralty," § 124.

Allowance of fees as affecting amount or value in controversy, see "Appeal and Error," § 59.

Allowances by court, objections first raised on appeal, see "Appeal and Error," § 226.

Alteration of note by adding clause for payment of attorney's fees, see "Alteration of Instruments," § 11.

Appealability of order making allowance to counsel of receiver, see "Appeal and Error," § 71.

Appealability of order of appellate division reversing order of special term appointing referee to determine value of attorney's services, see "Appeal and Error," § 84.

As affecting amount involved, see "Appeal and Error," § 52.

As element of damages, see "Damages," §§ 70-73.

As preferred claim in bankruptcy, see "Bankruptcy," § 347.

As usury, see "Usury," §§ 53-58.

Conflict with constitutional maxim of right to obtain justice freely, without purchase, by statutes regulating fees, see "Constitutional Law," § 326.

Delegation to county board of power to fix fees, see "Constitutional Law," § 63.

Delegation of legislative power to judiciary to fix salary of reporter, see "Constitutional Law," § 61.

Denial of equal protection of laws by statutes regulating fees, see "Constitutional Law," § 248.

Deprivation of property without due process of law by statute regulating fees, see "Constitutional Law," § 317.

Error in allowance or disallowance as costs and fees as ground for reversal, see "Appeal and Error," § 1171.

Extortion, see "Extortion."

Finality of decree enforcing liens for attorney's fees on fund in court, see "Appeal and Error," § 80.

Finality of order allowing alimony and counsel fees pending action, see "Appeal and Error," §§ 72, 81; "Divorce," § 280.

Finality of order allowing fees to master in chancery, see "Appeal and Error," § 72.

Finality of order awarding counsel fees incurred by representatives of decedent, see "Appeal and Error," § 77.

Finality of order for payment of counsel fees pending action, see "Appeal and Error," § 72.

For connecting with sewer, see "Municipal Corporations," § 712.

For publishing notices and other matters in newspapers, see "Newspapers," § 5.

For use of streets by street railroads, see "Street Railroads," § 24.

Impairment of obligation of contracts by statute regulating fees, see "Constitutional Law," § 185.

Impairment of vested right by statute regulating fees, see "Constitutional Law," § 112.

Imposition of liability for fees as denial of equal protection of laws, see "Constitutional Law," § 248.

Incorporation fees, see "Corporations," § 19.

Interference with due process of law by statutes regulating fees, see "Constitutional Law," § 317.

Joinder of causes of action against officers to recover illegal fees charged and to recover penalty therefor, see "Action," § 45.

Joint ownership of fees as ground for accounting, see "Account," § 3.

Liability of attorney for officers' fees, see "Attorney and Client," § 25.

Liability of clerk of court for failure to pay over fees collected, see "Clerks of Courts," §§ 72, 74.

Liability of county for fees, see "Counties," §§ 136-139.

License fees in general, see "Licenses," §§ 28-35.

License fees of telegraph and telephone companies, see "Telegraphs and Telephones," § 10.

Liquor license fees, see "Intoxicating Liquors," §§ 90-97.

Mandamus to compel entry of sheriff's fees in probate fee book, see "Mandamus," § 15.

Mode of review of order overruling motion for attorney's fees, see "Appeal and Error," § 4.

Modification of judgment as to fees, see "Appeal and Error," § 1151.

Modification of provisions on appeal, see "Appeal and Error," § 1151.

Mortgage to secure fees, see "Chattel Mortgages," §§ 19, 25, 115, 125.

\*Annotation: Words and Phrases, same title.

Nonpayment of fees for writ as ground for abatement of suit, see "Abatement and Revival," § 17.

Of attorneys as damages recoverable in action for breach of covenant, see "Covenants," § 132.

Payment of entrance fees in furtherance of gambling contest, see "Gaming," § 8.

Payment on issuance of mandate from appellate court, see "Appeal and Error," § 1189.

Payment on taking appeal or other proceeding for review, see "Appeal and Error," § 370.

Payment or deposit as prerequisite of right to demand jury trial, see "Jury," § 26.

Payment or security on taking appeal or other proceeding for review, see "Appeal and Error," §§ 369-395; "Certiorari," § 43; "Criminal Law," § 1075; "Justices of the Peace," §§ 158, 159, 202.

Presumptions on appeal in favor of order allowing attorneys' fees in trial court, see "Appeal and Error," § 936.

Recovery of fees paid under invalid statute, see "Payment," § 84.

Res gestæ in prosecution of officer for presenting fraudulent claims for fees, see "Criminal Law," § 363.

Review of question of fees as depending on presentation in lower court, see "Appeal and Error," § 177.

Right of state agricultural society to charge admission fee to annual fair, see "Agriculture," § 5.

Right to accounting for fees, see "Account," § 1.

Rules of court as to fees, see "Courts," § 80.

Special or local laws for regulation of fees of officers, see "Statutes," § 102.

Stipulation in mortgage for payment of fees on foreclosure, see "Mortgages," §§ 19, 125, 377, 581.

Stipulations in notes for payment of attorneys' fees in case of suit, see "Bills and Notes," §§ 126, 160, 534.

Subject and title of acts relating to fees and compensation of public officers, see "Statutes," § 125.

Trial fees, see "Costs," § 157.

*In particular actions or proceedings.*

See "Admiralty," § 124; "Bankruptcy," § 484; "Divorce," §§ 188-198; "Extradition," §§ 18, 40; "Garnishment," § 136; "Injunction," § 200; "Insolvency," § 188; "Inspection," § 6; "Interpleader," § 35; "Judicial Sales," § 63; "Partition," § 114.

Appointment of receiver for corporation, see "Corporations," § 557.

Book account or book debt, see "Account, Action on," §§ 17, 18.

By creditors of corporations, see "Corporations," § 548.

Condemnation proceedings, see "Eminent Domain," § 265.

Coroner's inquest, see "Coroners," § 21.

Discharge of prisoners, see "Prisons," § 18.

Entry, appraisal, bonding, and warehousing imported goods, see "Customs Duties," § 92.

For damages caused by combinations, see "Monopolies," § 28.

For judgment against real property for taxes, see "Taxation," § 650.

For trespass by animals, see "Animals," § 100.

For unpaid taxes, see "Taxation," § 598.

Judicial sales in general; see "Judicial Sales," § 63.

On bill or note, see "Bills and Notes," §§ 99, 110, 126, 145, 160, 288, 396, 429, 491, 534.

On examination of bankrupt or others in bankruptcy proceedings, see "Bankruptcy," § 239.

Pension proceedings, see "Pensions," § 6.

Probate proceedings and actions relating to wills or probate, see "Wills," §§ 402-416.

Sale of land for taxes, see "Taxation," § 691.

Sale under power in mortgage, see "Chat-tel Mortgages," § 266.

To construe wills, see "Wills," § 707.

To enforce mechanic's lien, see "Mechanics' Liens," § 310.

To enforce vendor's lien, see "Vendor and Purchaser," § 294.

To foreclose corporate mortgages or trust deeds, see "Corporations," § 482.

To foreclose lien or mortgage on railroad property, see "Railroads," § 199.

To foreclose mortgage in general, see "Chattel Mortgages," § 290; "Mortgages," §§ 377, 581, 582.

Transfers of shares of corporate stock, see "Corporations," § 132.

*Of particular classes of officers or other persons.*

See "Attorney General," § 3; "Coroners," § 7; "Court Commissioners," § 2; "Detectives," § 5; "District and Prosecuting Attorneys," §§ 5, 6; "Executors and Administrators," §§ 488-501; "Judges," § 22; "Justices of the Peace," §§ 15-18; "Registers of Deeds," § 3; "Sheriffs and Constables," §§ 28-76; "United States Marshals," §§ 5-27; "Witnesses," §§ 24-34.

Appraisers of property taken under execution, see "Execution," § 141.

Appraisers on foreclosure of mortgage, see "Mortgages," § 505.

Arbitrators, see "Arbitration and Award," § 41.

Assignee or trustee for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 390-393.

Attorneys, see "Attorney and Client," §§ 130-192.

Attorneys, as items of costs, see "Costs," §§ 172, 173, 252.

Auctioneers, see "Auctions and Auctioneers," § 10.

Clerks of bankruptcy courts, see "Bankruptcy," § 483.

Clerks of state courts, see "Clerks of Courts," §§ 11-37.



Clerks of territorial courts, see "Clerks of Courts," § 63.  
 Clerks of United States courts, see "Clerks of Courts," §§ 39-62.  
 Consuls, see "Ambassadors and Consuls," § 7.  
 County officers, see "Counties," §§ 77-80.  
 Court bailiffs, see "Courts," § 58.  
 Court criers, see "Courts," § 58.  
 Court officers in general, see "Courts," § 55.  
 Court stenographers, see "Admiralty," § 77; "Courts," § 57.  
 Curators, see "Absentees," § 5.  
 Custodian of attached property, see "Attachment," § 193.  
 Custodian of property taken in execution, see "Execution," § 156.  
 Customs officers, see "Customs Duties," § 55.  
 Election officers, see "Elections," § 53.  
 Examiners of titles, see "Abstracts of Title," § 3.  
 Garnishee in justice's courts, see "Justices of the Peace," § 87.  
 Garnishees, as witnesses, see "Garnishment," § 186.  
 Guardians ad litem, see "Infants," § 83.  
 Guardians in general, see "Guardian and Ward," §§ 149-152.  
 Inspection officers in general, see "Inspection," § 6.  
 Inspectors of mines, see "Master and Servant," § 12.  
 Jurors, see "Grand Jury," § 14; "Jury," § 77.  
 Marshals and receivers in bankruptcy, see "Bankruptcy," § 484.  
 Master or commissioner in equity, see "Equity," § 394.  
 Municipal officers, see "Municipal Corporations," §§ 161-165.  
 Officers in general, see "Officers," §§ 94-101.  
 Pension agents or attorneys, see "Pensions," § 6.  
 Policemen, see "Municipal Corporations," § 186.  
 Poundkeepers, see "Animals," §§ 105, 107.  
 Prison officers, see "Prisons," §§ 8, 18.  
 Proctors, see "Admiralty," § 124.  
 Receivers, see "Corporations," § 627; "Receivers," §§ 195-198.  
 Referees, in general, see "Reference," § 76.  
 Referees and commissioners in partition proceedings, see "Partition," § 91.  
 Referees in bankruptcy, see "Bankruptcy," § 223.  
 State officers, see "States," §§ 57-64.  
 Tax assessors, see "Taxation," § 316.  
 Tax collectors, see "Taxation," § 549.  
 Town officers, see "Towns," § 29.  
 Township clerk in partition fence proceedings, see "Fences," § 16.  
 Trustees in bankruptcy, see "Bankruptcy," § 368.  
 United States officer in general, see "United States," § 39.  
 Wharfingers, see "Wharves," §§ 15-19.

\*Annotation: Words and Phrases, same title.

## **FEE SIMPLE.\***

### *Cross-References.*

Estates in general, see "Estates," § 5.  
 Construction of decree vesting title, see "Equity," § 431.  
 Construction of deeds, see "Deeds," § 124.  
 Construction of tax deeds, see "Taxation," § 779.  
 Construction of wills, see "Wills," §§ 597-601.  
 Loss of title, see "Abandonment," § 2.  
 Nature and extent of title or right by adverse possession, see "Adverse Possession," § 106.  
 Title to fee in property dedicated to public use in general, see "Dedication," § 62.

## **FEE TAIL.\***

### *Cross-Reference.*

Estates, see "Estates Tail."

## **FEIGNED ACTION.\***

### *Cross-Reference.*

See "Action," § 8.

## **FEIGNED ISSUES.\***

### *Cross-References.*

See "Equity," §§ 376-382; "Trial," §§ 369-374.  
 Appeal from refusal to order issue to be framed for jury, see "Appeal and Error," § 4.  
 Finality of order entered on verdict of jury, on issue out of chancery, see "Appeal and Error," § 78.  
 Harmless error in admission of evidence, see "Appeal and Error," § 1054.  
 Mode of review of order directing framing of issue, see "Appeal and Error," § 6.  
 Review of discretion of lower court, see "Appeal and Error," § 974.  
 Review of findings against verdict of jury, see "Appeal and Error," § 1014.  
 Review of verdict of jury, see "Appeal and Error," § 1000.

## **FELLOW SERVANTS.\***

### *Cross-References.*

See "Master and Servant," §§ 159-202.  
 Review of question as depending on presentation in lower court, see "Appeal and Error," § 173.

## **FELONIOUSLY.\***

### *Cross-References.*

Necessity of use of word in indictment, see "Indictment and Information," § 91; "Larceny," § 29.

## **FELONY.\***

### *Cross-References.*

See "Compounding Felony"; "Convicts"; "Criminal Law," § 27.  
 Allegations in indictment or information as to felonious nature of act, see "Indictment and Information," § 91.  
 Amendment of information, see "Indictment and Information," § 161.

Arrest for felony without warrant, see "Arrest," §§ 63, 64.  
 Conditions precedent to civil action for felonious act, see "Action," § 10.  
 Conspiracy to commit, see "Conspiracy," § 28.  
 Construction of word as applied to naturalization laws, see "Aliens," § 72.  
 Duplicity in indictment, see "Indictment and Information," § 125.  
 Extent of punishment, see "Criminal Law," § 1208.  
 Homicide in commission of or intent to commit, see "Homicide," § 18.  
 Joinder of felonies and misdemeanors in indictment or information, see "Indictment and Information," § 131.  
 Merger of civil remedy in crime, see "Action," § 5.  
 Merger of conspiracy to commit in offense committed, see "Conspiracy," § 37.  
 Necessity of indictment, see "Indictment and Information," §§ 1-5.  
 Presence of accused during prosecution, see "Criminal Law," § 636.  
 Proper mode of accusation, see "Indictment and Information," § 4.  
 Right to release on bail of persons charged with felony, see "Bail," §§ 43, 44.  
 Validity of contracts to compound felony, see "Contracts," § 128.  
 Waiver of right to jury trial in prosecution for felony, see "Jury," § 29.

#### FEMALES.\*

##### *Cross-References.*

Admission to saloons, see "Intoxicating Liquors," § 119.  
 As vagrants, see "Vagrancy."  
 Citizenship, see "Citizens," §§ 7, 8.  
 Contributory negligence of, see "Negligence," § 68.

Defamation of, see "Libel and Slander," §§ 7, 144.  
 Discrimination by reason of sex, see "Constitutional Law," § 224.  
 Eligibility for license to sell liquors, see "Intoxicating Liquors," § 58.  
 Eligibility to office, see "Officers," § 20.  
 Employment in saloons, see "Intoxicating Liquors," § 118.  
 Entry on public lands, see "Public Lands," § 80.  
 Exemption from arrest in civil actions, see "Arrest," §§ 3, 8.  
 Imprisonment in discharge of fine, see "Fines," § 12.  
 Married women, see "Husband and Wife."  
 Offenses against, see "Abduction"; "Abortion"; "Bastards"; "Husband and Wife," §§ 302-321; "Rape"; "Seduction."  
 Profanity in presence of, see "Disorderly Conduct," § 1.  
 Regulation of employment as special legislation, see "Statutes," § 81.  
 Regulations as to hours of work, see "Master and Servant," § 13.  
 Right of suffrage, see "Elections," §§ 6, 13, 62-65.  
 Right to admission to bar, see "Attorney and Client," § 4.  
 Right to appointment as teachers, see "Schools and School Districts," § 127.  
 Statute regulating hours of labor as infringement of liberty of contract, see "Constitutional Law," § 89.

#### FEME COVERT.\*

##### *Cross-References.*

See "Husband and Wife"; "Marriage."

#### FEME SOLE.\*

##### *Cross-Reference.*

See "Husband and Wife."

## FENCES.\*

### *Scope-Note.*

[INCLUDES structures for inclosing lands in general; statutory provisions relating thereto; rights, duties, and liabilities of proprietors or occupants of lands in respect of such structures; and legal proceedings relating thereto.

[EXCLUDES fences as indicating boundaries (see "Boundaries"); fencing railroads (see "Railroads"); and fencing excavations or dangerous premises or machinery (see "Master and Servant"; "Mines and Minerals"; "Negligence").

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Duty to erect and maintain in general.
- § 2. Statutory provisions.
- § 3. — In general.
- § 4. — County and district fence laws.
- § 5. Duty to erect and maintain partition fences.
- § 6. — In general.

\*Annotation: Words and Phrases, same title.

- § 7. — Statutory provisions.
- § 8. — Rights acquired by prescription.
- § 9. — Agreements of landowners.
- § 10. — Persons liable.
- § 11. Division of partition fence between landowners.
- § 12. — In general.
- § 13. — Appointment and proceedings of fence viewers.
- § 14. Proceedings to compel erection of partition fence or contribution.
- § 15. — In general.
- § 16. — View and assessment by fence viewers.
- § 17. Failure to erect or maintain partition fence.
- § 18. Location.
- § 19. Construction, material, and sufficiency.
- § 20. Ownership.
- § 21. — Partition fences.
- § 22. Injuries caused by fences.
- § 23. — In general.
- § 24. — Personal injuries.
- § 25. — Domestic animals.
- § 26. Removal or destruction of fences.
- § 27. — Civil liability.
- § 28. — Criminal responsibility.
- § 29. Fencing lands of another.

#### *Cross-References.*

- |  |  |
|--|--|
| <p>Absence of fence as defense in trespass, see "Trespass," § 84.</p> <p>Along railroad rights of way, see "Railroads," §§ 103, 104.</p> <p>Along railroad rights of way, injuries to animals from defect, see "Railroads," § 412.</p> <p>Along railroad rights of way, injuries to animals from failure to fence, see "Railroads," § 411.</p> <p>Along railroad rights of way, injuries to persons on or near tracks from failure to fence, see "Railroads," § 361.</p> <p>Animals running at large, see "Animals," §§ 48-57.</p> <p>Application of fence laws to fencing of railroad right of way, see "Railroads," § 103.</p> <p>As boundaries, see "Boundaries."</p> <p>As fixtures, see "Fixtures," § 1.</p> <p>As interrupting adverse use of land as highway, see "Highways," § 6.</p> <p>As nuisance, see "Adjoining Landowners," § 6; "Nuisance," §§ 3, 61.</p> <p>As obstructions to use of easements, see "Easements," § 58.</p> <p>Constitutionality of act requiring erection of partition fences, taking property without compensation, see "Eminent Domain," § 2.</p> <p>Constitutionality of regulations, depriving of property without due process of law, see "Constitutional Law," § 294.</p> <p>Duties of agister, see "Animals," § 23.</p> <p>Effect of fence laws as to care required of railroad companies in respect to animals on or near tracks, see "Railroads," § 406.</p> <p>Fencing against trespassing animals, see "Animals," §§ 92, 98.</p> | <p>Inclosing land by fences as element of adverse possession, see "Adverse Possession," § 19.</p> <p>Inclosing public lands, see "Public Lands," § 19.</p> <p>Larceny, see "Larceny," § 5.</p> <p>Maintenance of fences on demised premises, see "Landlord and Tenant," § 155.</p> <p>Master's duty in respect to servant, see "Master and Servant," § 112.</p> <p>Mechanics' liens for construction of fences, see "Mechanics' Liens," § 33.</p> <p>Necessity for fences as ground for compensation to property owner under laws of eminent domain, see "Eminent Domain," § 103.</p> <p>Nonuniformity of tax levied for construction of fences under stock laws, see "Taxation," § 40.</p> <p>Obstructions and encroachments on highways, see "Highways," §§ 153-164.</p> <p>Possession by fencing land as sufficient to maintain action of forcible entry and detainer, see "Forcible Entry and Detainer," § 9.</p> <p>Power of fence viewers to establish boundaries, see "Boundaries," § 51.</p> <p>Removal on opening highway, see "Highways," § 102.</p> <p>Restraining removal, see "Injunction," § 51.</p> <p>Right to jury trial in suit to foreclose lien for building partition fence, see "Jury," §§ 12, 14.</p> <p>Structures affecting rights of adjoining proprietors, see "Adjoining Landowners," § 6.</p> |
|--|--|

# **§ 1. Duty to erect and maintain in general.**

## **§§ 2-4. Statutory provisions.**

### *Cross-References.*

Effect of partial invalidity of statute, see "Statutes," § 64.

Implied repeal of law by act on same subject, see "Statutes," § 161.

## **§§ 5-10. Duty to erect and maintain partition fences.**

### *Annotation.*

Liability of one in possession of unfenced land for injuries to live stock which strays thereon from public range.—52 L. R. A. (N. S.) 133, note.

Validity of oral agreement as to erection or maintenance of fences.—27 L. R. A. (N. S.) 226, note.

Prescriptive right to maintain fence.—53 L. R. A. 901, note.

Lack of division fence as affecting liability for damages by trespassing cattle.—22 L. R. A. 60, note.

Sufficiency of fences.—22 L. R. A. 105, note.

(a) The obligation to fence out cattle does not exist at common law, though the tenant must at his peril keep his cattle on his own lot, though such obligation can arise under some statute, or by a valid agreement between the owners of adjoining lots, or by prescription.—*Richardson v. Milburn*, 11 Md. 340. [Cited and annotated in 43 L. R. A. (N. S.) 448, on liability of landowner for damage by stock which enter upon his land and thence wander to adjoining property; in 22 L. R. A. 62, on owner's liability for trespass of cattle; in 53 L. R. A. 631, on extent of trespasser's liability for consequential injuries; in 30 L. R. A. (N. S.) 244, on necessity and character of title or possession to sustain action of trespass.]

## **§§ 11-13. Division of partition fence between landowners.**

## **§§ 14-16. Proceedings to compel erection of partition fence or contribution.**

### *Annotation.*

Injunction to compel or prevent erection, maintenance, or removal of fence.—7 L. R. A. (N. S.) 55, note.

(a) Where a married man, under a contract to pay him individually one-half of the expense, erects a divisional fence between the lands of his wife and those of an adjoining proprietor, he may sue in his own name to recover the amount, notwithstanding he may have acted as the agent of his wife.—*Willson v. Sands*, 36 Md. 38.

## **§§ 17-21. (See Analysis.)**

## **§§ 22-25. Injuries caused by fences.**

### *Cross-References.*

Estoppel to object to instructions, see "Trial," § 105.

Evidence of precautions to prevent recurrence of injury, see "Negligence," § 131.

Liability of agent, see "Principal and Agent," § 160.

Notice to agent as notice to principal, see "Principal and Agent," § 177.

Notice to corporate officers as notice to corporation, see "Corporations," § 428.

Snow fence, see "Negligence," § 136.

### *Annotation.*

Liability of one who neglects to repair division fence for death or injury of live stock after straying through the fence.—52 L. R. A. (N. S.) 99, note.

Extent of liability for permitting another's live stock to escape from pasture by failure to keep proper division fence.—20 L. R. A. 479, note.

## **§ 26. Removal or destruction of fences.**

## **§ 27.— Civil liability.**

### *Cross-References.*

Liability of railroad company, see "Railroads," § 113.

Responsiveness of verdict to issue in general, see "Trial," § 329.

(a) It trespass q. c. f. for removing a fence, plaintiff cannot recover for damages done his crop by cattle not belonging to defendant, in consequence of the removal of the fence, without proof that the fence was his, or that defendant committed a trespass in removing it.—*Richardson v. Milburn*, 11 Md. 340. [Cited and annotated, see supra, §§ 5-10.]

## **§ 28.— Criminal responsibility.**

### *Cross-References.*

See "Indictment and Information," § 110. Acts and declarations of conspirators and codefendants, see "Criminal Law," § 424.

Applicability of instructions to case, see "Criminal Law," § 814.

Confessions, see "Criminal Law," § 518.

Harmless error, see "Criminal Law," § 1172.

Incriminating others, see "Criminal Law," § 359.

Instructions as to principals and accessories, see "Criminal Law," § 792.

Instructions as to remarks of counsel, see "Criminal Law," § 730.

Mistake of fact as defense, see "Criminal Law," § 33.

## **§ 29. Fencing lands of another.**

## **FENCE VIEWERS.**

### *Cross-References.*

See "Fences," §§ 13, 16.

Appraisement of damages by trespassing animals, see "Animals," § 100.

**FEOFFMENT.\****Cross-Reference.*

Deed of, see "Deeds," § 21.

**FERÆ NATURÆ.\****Cross-References.*

See "Animals," §§ 2, 69; "Fish," § 1.

**FERMENTED LIQUORS.\****Cross-Reference.*

See "Intoxicating Liquors," § 134.

**FERRETS.\****Cross-References.*

Employment of tax ferrets, see "Municipal Corporations," § 978; "Taxation," § 315.

**FERRIAGE.\****Cross-Reference.*

See "Ferries," § 31.

**FERRIES.\****Scope-Note.*

[INCLUDES the establishment, maintenance, regulation, and use of ferries for the passage of the public over inland waters, subject to payment of tolls; organization, franchises, and powers of ferry companies; and rights, duties, and liabilities of individuals or corporations exercising ferry franchises, in their capacities as carriers as well as otherwise.

[EXCLUDES matters applicable to corporations in general (see "*Corporations*"); exercise of the power of eminent domain (see "*Eminent Domain*"); obstruction of navigation (see "*Navigable Waters*"); and taxation of ferries (see "*Taxation*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Establishment and Maintenance.**

- § 1. Right to establish and maintain in general.
- § 2. What constitutes a ferry.
- § 3. Character of ferry as highway.
- § 4. Constitutional and statutory provisions.
- § 5. Establishment by public authorities.
- § 6. Ferry companies.
- § 7. — Corporate powers and liabilities.
- § 8. — Actions.
- § 9. Franchises and privileges.
- § 10. — Nature of franchise.
- § 11. — Power to grant.
- § 12. — Persons who may acquire.
- § 13. — Prescription.
- § 14. — Proceedings to acquire.
- § 15. — Grant or sale or lease by public authority.
- § 16. — Extent and exclusiveness of franchise.
- § 17. — Right of landing and embarking.
- § 18. — Transfer.
- § 19. — Infringement or disturbance.
- § 20. — Termination.
- § 21. Location.
- § 22. Landings and other interests in land.
- § 23. Construction and maintenance of boats, buildings, and works.
- § 24. Sale and transfer of ferry.
- § 25. Injuries to ferry property.
- § 26. Offenses.

\*Annotation: Words and Phrases, same title.

**II. Regulation and Operation.**

- § 27. Power to control and regulate.
- § 28. Duty to operate and transport.
- § 29. Statutory and municipal regulations.
- § 30. Licenses and taxes.
- § 31. Tolls or fares.
- § 32. Injuries incident to operation.
- § 33. Actions for injuries.
- § 34. Penalties for violations of regulations.
- § 35. Offenses incident to operation.

*Cross-References.*

Condemnation of property for ferry as taking for public use, see "Eminent Domain," § 22.  
 Ferry license as constituting contract within Constitution, see "Constitutional Law," § 128.  
 Imposing license tax on ferry operatives as violative of constitutional requirement of uniformity of taxation, see "Licenses," § 7.  
 Jurisdiction of action to recover penalties as

dependent on amount or value in controversy, see "Courts," § 121.  
 Liability of city for negligent management of ferry owned by it, see "Municipal Corporations," § 852.  
 Matters applicable to carriers in general, see "Carriers."  
 Recovery of payment obtained by fraud for relinquishment of franchise, see "Payment."  
 Remedies of taxpayers, see "Counties," § 196.

**I. ESTABLISHMENT AND MAINTENANCE.****§ 1. Right to establish and maintain in general.***Annotation.*

Establishment of ferries.—59 L. R. A. 515, note.

**§§ 2-8. (See Analysis.)****§§ 9-20. Franchises and privileges.***Cross-References.*

Appointment of committee by city aldermen, see "Municipal Corporations," § 91.

Recovery of payment obtained by fraud for relinquishment of franchise, see "Payment," § 86.

Right to jury trial on issue of damages in suit for infringement of franchise, see "Jury," § 18.

*Annotation.*

What amounts to interference with ferry franchise.—30 L. R. A. (N. S.) 462, note.

Who entitled to ferry franchise.—59 L. R. A. 528, note.

Bridge as disturbance of ferry franchise.—1 B. R. C. 341, note.

(a) Act 1868, c. 187, incorporating a ferry company and giving the company the use of a wharf or landing in Baltimore city, conferred upon the company the exclusive right to hold and use the end of the wharf for ferry purposes.—*Broadway & L. P. Ferry Co. v. Hankey*, 31 Md. 346.

**§§ 21-26. (See Analysis.)****II. REGULATION AND OPERATION.***Annotation.*

Ferryman as common carrier.—68 L. R. A. 153, note.

Rights and duties of ferryman.—59 L. R. A. 546, note.

**§§ 27-29. (See Analysis.)****§ 30. Licenses and taxes.***Cross-Reference.*

Ordinances imposing license taxes on ferry operatives as violative of constitutional requirement for uniformity of taxation, see "Licenses," § 7.

**§ 31. Tolls or fares.***Annotation.*

Power of judiciary to fix rates to be charged.—8 L. R. A. (N. S.) 529, note.

Business of ferries affected with a public interest subjecting them to regulation and control as to rates or prices.—6 L. R. A. (N. S.) 835, note.

Regulation of rates of toll for ferriage.—59 L. R. A. 543, note.

Right to take tolls without franchise.—37 L. R. A. 712, note.

Legislative regulation of rates.—33 L. R. A. 180, note.

**§§ 32-35. (See Analysis.)****FERRYBOATS.\****Cross-Reference.*

See "Ferries."

\*Annotation: Words and Phrases, same title.

**FERTILIZERS.\****Cross-Reference.*

Regulation of manufacture and sale, see "Agriculture," § 7.

**FETTERS.***Cross-Reference.*

On accused during trial, see "Criminal Law," § 637.

**FIANCEE.***Cross-Reference.*

Insurable interest in life of betrothed, see "Insurance," § 116.

**FICTITIOUS ACTIONS.***Cross-References.*

See "Action," § 8.

Ground for involuntary nonsuit, see "Dismissal and Nonsuit," § 53.

**FICTITIOUS CLAIMS.\****Cross-Reference.*

Affecting jurisdictional amount, see "Appeal and Error," § 47.

**FICTITIOUS NAMES.\****Cross-References.*

Designation of unknown parties by fictitious names, see "Parties," § 73.

Transacting partnership business under fictitious name, see "Partnership," § 64.

Use of, in committing forgery, see "Forgery," § 8.

**FICTITIOUS PERSON.***Cross-Reference.*

Note payable to, see "Bills and Notes," § 32.

**FIDEI COMMISSUM.\****Cross-References.*

See "Perpetuities," § 1; "Trusts"; "Wills," §§ 669-694.

**FIDELITY INSURANCE.***Cross-Reference.*

See "Insurance," §§ 295, 332, 430.

**FIDUCIARY RELATIONS.\****Cross-References.*

See "Attorney and Client"; "Brokers"; "Factors"; "Guardian and Ward"; "Principal and Agent"; "Trusts."

Acts in fiduciary capacity ground for arrest, see "Arrest," § 14.

Adverse possession as between persons in fiduciary relation, see "Adverse Possession," § 61.

Affecting validity of gift, see "Gifts," § 49.

Allegation in action for accounting, see "Account," § 17.

Breach of duty by person in fiduciary relation as creating constructive trust, see "Trusts," § 102.

Debts created in fiduciary relation released by discharge in bankruptcy, see "Bankruptcy," § 426.

Disclosure of communications, see "Witnesses," §§ 196-206, 208-215.

Element of fraud, see "Fraud," § 7.

Element of fraud as to creditors, see "Fraudulent Conveyances," § 108.

Enforcement of liabilities of fiduciary against exempt property, see "Exemptions," § 72.

Evidence as to character of possession of property, see "Adverse Possession," § 85.

Execution of bill or note in fiduciary capacity, see "Bills and Notes," § 123.

Existence of trust relation between complainant and defendants authorizing suit for accounting, see "Account," § 16.

Fiduciary obligations as preferred claims against estate assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 310.

Ground for jurisdiction in equity, see "Equity," § 21.

Ground of action for account, see "Account," § 4.

Interest on judgment against fiduciary, see "Interest," § 22.

Nature and form of action against fiduciary for illegal act, see "Action," § 27.

Preference of fiduciary obligations in assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 122.

Presumption as to adverse holding by executor who is also an heir, see "Adverse Possession," § 85.

Purchase of property by fiduciaries as constituting color of title, see "Adverse Possession," § 77.

Survival of action involving performance of duties by fiduciary, see "Abatement and Revival," § 52.

**FIELD NOTES.\****Cross-References.*

Admissibility in trespass to try title, see "Trespass to Try Title," § 40.

Description of boundaries, see "Boundaries," §§ 3, 10, 36.

**FIERI FACIAS.\****Cross-Reference.*

See "Execution."

**FIGHTING.\****Cross-References.*

See "Assault and Battery," §§ 11, 65; "Prize Fighting."

Homicide in mutual combat, see "Homicide," §§ 63, 289.

**FIGURES.\****Cross-References.*

Alteration, see "Alteration of Instruments," §§ 5-7.

Expression of sums of money in figures only, see "Wills," § 130.

\*Annotation: Words and Phrases, see title.

In indictment or information, see "Indictment and Information," § 78.  
 Subject of ownership as trade-mark, see "Trade-Marks and Trade-Names," § 5.

### FILIATION.\*

#### Cross-Reference.

Judgment in bastardy proceedings, see "Bastards," § 77.

### FILING.\*

#### Cross-References.

Abstract of appellee, see "Appeal and Error," § 585.  
 Abstract or evidence of title in ejectment, see "Ejectment," § 78.  
 Affidavit for appeal in forma pauperis, see "Appeal and Error," § 389.  
 Affidavit in support of motion, see "Motions," § 34.  
 Affidavit or charge in proceedings for contempt, see "Contempt," § 54.  
 Affidavits for attachment, see "Attachment," § 123.  
 Application to purchase school lands, see "Public Lands," § 173.  
 Assessment rolls, see "Taxation," § 435.  
 Assignment for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 163-170.  
 Assignment in general, see "Assignments," § 46.  
 Assignment of error, see "Appeal and Error," §§ 744, 745.  
 Assignment of mortgage, see "Chattel Mortgages," § 204; "Mortgages," §§ 230-232.  
 Assignments affecting mechanic's lien, see "Mechanics' Liens," § 114.  
 Assignment under insolvency laws, see "Insolvency," § 53.  
 Award of arbitrators, see "Arbitration and Award," §§ 50, 55.  
 Bail bond, see "Bail," §§ 15, 61.  
 Bill of exceptions, see "Criminal Law," § 1092; "Exceptions, Bill of," § 57.  
 Bill of sale, see "Sales," § 148.  
 Bond of assignee or trustee for benefit of creditors, see "Assignments for Benefit of Creditors," § 208.  
 Bond of liquor dealer, see "Intoxicating Liquors," § 85.  
 Bond of officers in general, see "Officers," § 37.  
 Bond on appeal from justice's court, see "Justices of the Peace," § 159.  
 Bond or undertaking on appeal or writ of error, see "Appeal and Error," §§ 387, 471.  
 Briefs, see "Appeal and Error," § 765; "Criminal Law," § 1130.  
 Case or statement of facts on appeal in lower court, see "Appeal and Error," § 573.  
 Certificate, affidavit or notice of formation of limited partnership, see "Partnership," § 357.  
 Certificate of nomination by electors, see "Elections," § 145.  
 Certificate of nomination by political party, see "Elections," § 139.

Certificate of reorganization of turnpike company, see "Turnpikes and Toll Roads," § 28.  
 Charter or articles of association of foreign corporation, see "Corporations," § 644.  
 Claim against assigned estate, see "Assignments for Benefit of Creditors," § 303.  
 Claim against county, see "Counties," § 203.  
 Claim against estate of decedent, see "Executors and Administrators," § 228.  
 Claim against municipal corporations, see "Municipal Corporations," § 1008.  
 Claim against property in hands of receiver, see "Receivers," § 149.  
 Claim of exemption, see "Exemptions," § 124.  
 Claim or statement of mechanic's lien, see "Mechanics' Liens," §§ 128-132, 155-157, 159.  
 Claim or statement of mechanic's lien on mining property, see "Mines and Minerals," § 114.  
 Claim proved against bankrupt's estate, see "Bankruptcy," § 343.  
 Contract for employment of teacher, see "Schools and School Districts," § 135.  
 Contract for or consent to improvements on land, see "Mechanics' Liens," §§ 74, 100, 127.  
 Contract in general, see "Contracts," § 44.  
 Contract of conditional sale, see "Sales," §§ 165, 472, 474.  
 Copy of account sued on, see "Account, Action on," § 5.  
 Copy of record in federal court on removal of cause, see "Removal of Causes," § 92.  
 Copy of writ and return in attachment, see "Attachment," § 323.  
 Copy of writ of attachment for purpose of levy on real property, see "Attachment," § 167.  
 Criminal information or complaint, see "Indictment and Information," §§ 35-45.  
 Deeds for record, see "Deeds," §§ 59, 79-88.  
 Delinquent tax list, see "Taxation," § 629.  
 Deposition, see "Depositions," § 79.  
 Evidence taken before grand jury, see "Indictment and Information," § 12.  
 Examination in supplementary proceedings, see "Execution," § 400.  
 Failure to file instrument affecting its validity as to creditors, see "Fraudulent Conveyances," § 154.  
 Fees of clerks of state courts for filing papers, see "Clerks of Courts," § 17.  
 Fees of clerks of United States courts for filing papers, see "Clerks of Courts," § 47.  
 Findings of fact and conclusions of law by court, see "Trial," § 403.  
 Indictment or presentment, see "Indictment and Information," § 11.  
 Information for violation of municipal ordinance, see "Municipal Corporations," § 639.

\*Annotation: Words and Phrases, same title.



Instrument constituting election under will, see "Wills," § 793.  
 Interrogatories for depositions, see "Depositions," § 46.  
 Inventory or schedule of assets on assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 74.  
 Judgment roll, see "Judgment," § 280.  
 Legislative bills, see "Statutes," § 37.  
 Lien for wages, see "Master and Servant," § 82.  
 List of jurors summoned, see "Jury," § 69.  
 Mandate or remittitur from appellate court, in lower court, see "Appeal and Error," § 1191.  
 Map in proceedings for incorporation of hamlet, see "Municipal Corporations," § 12.  
 Maps and plans of public improvement, see "Municipal Corporations," § 314.  
 Maps, plans or surveys in condemnation proceedings, see "Eminent Domain," § 186.  
 Mortgage, see "Chattel Mortgages," §§ 82-94; "Mortgages," §§ 89-96.  
 Motion for new trial, see "New Trial," § 153.  
 Motion for nunc pro tunc amendment of judgment, see "Judgment," § 326.  
 Motions in general, see "Motions," § 17.  
 Motion to recommit referee's report, see "Reference," § 101.  
 Notice of appeal in general, see "Appeal and Error," § 428.  
 Notice of appeal from justice's court, see "Justices of the Peace," § 160.  
 Notice of appeal in highway proceedings, see "Highways," §§ 58, 72.  
 Notice of claim by adverse possession, see "Adverse Possession," § 32.  
 Notice of claim for injury from defect or obstruction in highway, see "Highways," § 208.  
 Notice of claim for injury from defect or obstruction in street, see "Municipal Corporations," § 812.  
 Notice of claim for injury from torts of municipality in general, see "Municipal Corporations," § 741.  
 Notice of lis pendens, see "Lis Pendens," § 18.  
 Notice of motion for new trial, see "New Trial," § 153.  
 Oath of office by clerk of school district, see "Schools and School Districts," § 63.  
 Oath of office by school director, see "Schools and School Districts," § 53.  
 Oath of office of member of board of health, see "Health," § 3.  
 Objections to nomination for office, see "Elections," § 151.  
 Obscene matter with indictment for obscenity, see "Obscenity," § 12.  
 Opinion of court, see "Courts," § 106.  
 Order opening default judgment, see "Judgment," § 173.  
 Orders in general, see "Motions," § 56.  
 Papers on proceeding for service by publication, see "Process," § 99.  
 Pardon, see "Pardon," § 9.

Petition and bond for removal of cause, see "Removal of Causes," § 89.  
 Petition for establishment of drainage district, see "Drains," § 14.  
 Petition for incorporation of hamlet, see "Municipal Corporations," § 12.  
 Petition in involuntary bankruptcy proceedings, see "Bankruptcy," §§ 79, 85.  
 Petition in voluntary bankruptcy proceedings, see "Bankruptcy," § 45.  
 Pleading in general, see "Pleading," §§ 331-340.  
 Pleading as commencement of action, see "Action," § 64.  
 Pleading in equity, see "Equity," § 321.  
 Pleading, objections first raised on appeal, see "Appeal and Error," § 192.  
 Pleadings as commencement of lis pendens, see "Lis Pendens," § 7.  
 Proceedings relating to sale of bankrupt's property, see "Bankruptcy," § 263.  
 Proofs in equity, see "Equity," § 356.  
 Proposed case or statement on appeal, see "Appeal and Error," § 564; "Criminal Law," § 1099.  
 Protest against payment of duties, see "Customs Duties," § 105.  
 Record of municipal assessment, see "Municipal Corporations," § 183.  
 Record on appeal or writ of error, see "Appeal and Error," §§ 619-625, 627-630; "Criminal Law," § 1106; "Justices of the Peace," § 164.  
 Remonstrance against granting license, see "Intoxicating Liquors," § 68.  
 Remonstrance against municipal improvements, see "Municipal Corporations," § 297.  
 Renewal of chattel mortgages, see "Chattel Mortgages," § 99.  
 Report of commissioners in condemnation proceedings, see "Eminent Domain," § 234.  
 Report of establishment of sewer, see "Municipal Corporations," § 708.  
 Report of officers of corporations, see "Corporations," § 338.  
 Report of referee, see "Reference," § 98.  
 Return of attachment, see "Attachment," § 323.  
 Return of deposition, see "Depositions," § 79.  
 Return of execution, see "Execution," § 337.  
 Return of process in general, see "Process," § 139.  
 Schedule in bankruptcy proceedings, see "Bankruptcy," § 45.  
 Schedule of debts of assignor for benefit of creditors, see "Assignments for Benefit of Creditors," § 80.  
 Statement of facts, see "Criminal Law," § 1099.  
 Statutory bond, or bond taken by officer, see "Bonds," § 34.  
 Stipulations, see "Stipulations," § 9.  
 Transcript of judgment in other court, see "Judgment," § 290.  
 Transcript of justice's judgment in court of record, see "Judgment," § 291.  
 Warrant of attorney, see "Attorney and Client," § 73.

Written instruments in general, see "Records," § 7.  
 Written instruments in justices' courts, see "Justices of the Peace," § 98.

### **FILIUS NULLIUS.\***

*Cross-Reference.*  
 See "Bastards."

### **FILLING BLANKS.**

*Cross-References.*  
 See "Alteration of Instruments," §§ 7, 17;  
 "Bills and Notes," § 60; "Bonds," § 20;  
 "Deeds," §§ 32, 39; "Forgery," § 10.

### **FILTH.\***

*Cross-References.*  
 See "Nuisance."  
 Municipal regulations against, see "Municipal Corporations," §§ 606-608.  
 Pollution of streams by sewage, see "Municipal Corporations," § 838.  
 Pollution of streams in general, see "Waters and Water Courses," §§ 64-77.  
 Smoke and foul odors as element of damages to adjoining property in condemnation proceedings, see "Eminent Domain," § 104.

### **FILTRATION PLANT.\***

*Cross-Reference.*  
 Condemnation of land for, see "Eminent Domain," § 59.

### **FILUM AQUÆ.\***

*Cross-Reference.*  
 Boundaries on waters and water courses, see "Boundaries," §§ 12-18.

### **FILUM VIÆ.**

*Cross-Reference.*  
 Boundaries on roads and ways, see "Boundaries," §§ 19-22.

### **FINAL ACCOUNTS.\***

*Cross-References.*  
 See "Executors and Administrators," §§ 458-516; "Guardian and Ward," §§ 137-165; "Receivers," §§ 190-204; "Trusts," §§ 289-333.

### **FINAL HEARING.\***

*Cross-Reference.*  
 Of cause, see "Equity," §§ 369-392.

## **FINAL JUDGMENTS AND DECREES.\***

### *Cross-References.*

See "Equity," § 422; "Judgment," § 217.  
 Decisions reviewable, see "Admiralty," § 103; "Equity," § 422.  
 As affecting conclusiveness, see "Judgment," § 650.  
 As affecting merger and bar, see "Judgment," § 564.  
 Death of party after final judgment and pending motion for new trial, see "Abatement and Revival," § 68.  
 Decisions reviewable, see "Admiralty," § 103; "Appeal and Error," §§ 76-81; "Certiorari," § 16; "Justices of the Peace," § 146.  
 Finality of award of arbitrators, see "Arbitration and Award," § 59.  
 Finality of determination, as affecting right of review, see "Appeal and Error," §§ 66-84.  
 On default, see "Judgment," § 128.  
 On sale on partition, see "Partition," § 112.  
 Rendering final judgment on appeal or other proceeding for review, see "Appeal and Error," §§ 1142, 1143, 1153, 1175; "Criminal Law," § 1187.

### **FINAL PROCESS.\***

*Cross-Reference.*  
 See "Execution."

## **FINANCIAL CONDITION.**

### *Cross-References.*

Affecting damages for breach of marriage promise, see "Breach of Marriage Promise," § 27.  
 Evidence in general, see "Evidence," §§ 107, 471, 479.  
 Evidence as affecting damages in general, see "Damages," §§ 171, 181.  
 Evidence in actions for death, see "Death," §§ 70, 72.  
 Evidence in actions for seduction, see "Seduction," § 17.  
 Excuse for laches, see "Equity," § 77.  
 Opinion evidence, see "Evidence," §§ 474, 501.

## **FINDER OF PROPERTY.**

*Cross-Reference.*  
 See "Finding Lost Goods."

## **FINDING LOST GOODS.**

### *Scope-Note.*

[INCLUDES the finding and taking possession of lost goods of another, whereby the finder may acquire title thereto; nature, requisites, and incidents of such finding and possession; and rights, duties, and liabilities of finders of lost goods as to the owners or losers and as to others in general.

[EXCLUDES abandoned property (see "Abandonment"); wrecks and vessels and goods derelict at sea (see "Shipping"); estrays (see "Animals"); establishment of and

\*Annotation: Words and Phrases, same title.

actions on lost instruments in writing (see "*Lost Instruments*"); rights of finders of lost negotiable paper (see "*Bills and Notes*"); rewards for recovery of lost goods, etc. (see "*Rewards*"); and sales of lost goods (see "*Sales*").

[For complete list of matters excluded, see cross-references, post.]

### Analysis.

- § 1. Loss of property.
- § 2. Finding and taking possession.
- § 3. Evidence as to ownership.
- § 4. Rights and liabilities of finder as to owner.
- § 5. — In general.
- § 6. — Title to property.
- § 7. — Duties and liabilities as bailee.
- § 8. — Reimbursement of expenses.
- § 9. — Lien.
- § 10. Title and rights of finder as to third persons.
- § 11. Title and rights of finders inter se.

### Cross-References.

See "*Lost Instruments*."

Delivery of goods found to public administrator, see "*Executors and Administrators*," § 24.

Evidence in action for conversion, see "*Trover and Conversion*," § 37.

Recaptured sea lion, see "*Fish*," § 1.

Rewards for recovery of lost property, see "*Rewards*."

Stranded and lost logs, see "*Logs and Logging*," § 18.

Taking as larceny, see "*Larceny*," §§ 7, 16.

Waiver of reward for finding lost property, see "*Rewards*," § 8.

§§ 1-3. (See Analysis.)

§§ 4-9. Rights and liabilities of finder as to owner.

#### Annotation.

Rights and liability of finder of property.—37 L. R. A. 116; 1 L. R. A. (N. S.) 477; 8 L. R. A. (N. S.) 95; 35 L. R. A. (N. S.) 979, notes.

(a) A finder of lost property, for the restoration of which the owner has offered a reward, certain in amount, payable to him who should restore it, has a lien on the property, and may retain possession of it, if, on his offer to restore it, the owner refuses to pay the reward.—*Wilson v. Guyton*, 8 Gill 213. [Cited and annotated in 37 L. R. A. 119, on rights and liabilities of finder of property.]

(b) Where, however, the owner has merely offered to pay a "liberal reward," no such lien exists.—*Wilson v. Guyton*, 8 Gill 213. [Cited and annotated, see supra.]

§ 10. Title and rights of finder as to third persons.

§ 11. Title and rights of finders inter se.

#### Annotation.

Rights inter se of joint finders of lost property.—19 L. R. A. (N. S.) 1201, note.

### FINDINGS.\*

#### Cross-References.

Appealability of orders made on objection to findings, see "*Appeal and Error*," § 108.

As part of record on appeal, see "*Appeal and Error*," § 527.

Assignment of errors, see "*Appeal and Error*," § 750.

By administrative officers, see "*Aliens*," § 54.

By appellate court, see "*Appeal and Error*," §§ 1095, 1122.

By arbitrators in bankruptcy proceedings, see "*Bankruptcy*," § 251.

By arbitrators in general, see "*Arbitration and Award*," §§ 48-89.

By commissioners, appraisers or viewers in condemnation proceedings, see "*Eminent Domain*," §§ 234-237.

By court below as to amount of value in controversy, see "*Appeal and Error*," § 53.

By court in general, see "*Trial*," §§ 388-405.

By court in trespass on the case, see "*Action on the Case*," § 6.

\*Annotation: Words and Phrases, same title.

- By grand jury, see "Indictment and Information," § 10.
- By intermediate appellate court, see "Appeal and Error," §§ 1094, 1095.
- By interstate commerce commission, effect in proceedings to enforce orders of commission, see "Commerce," § 95.
- By jury in general, see "Criminal Law," § 870; "Justices of the Peace," § 114; "Trial," §§ 346-366.
- By master or commissioner in chancery, see "Equity," §§ 406-414.
- By referee, see "Reference," §§ 85-93.
- By referee in action for account, see "Account," § 20.
- By referee or auditor in action of book account, see "Account, Action on," § 24.
- By referees in bankruptcy, see "Bankruptcy," § 226.
- Conclusiveness of findings of court without judgment, see "Judgment," § 658.
- Conclusiveness on questions of fact on appeal, see "Appeal and Error," §§ 1007-1022.
- Conformity of judgment to findings, see "Judgment," §§ 256, 258.
- Construction of judgment with reference to findings, see "Judgment," § 527.
- Contrary to law or evidence ground for new trial, see "New Trial," §§ 65-81.
- Distinguished from judgment, see "Judgment," § 23.
- Effect of decision of intermediate court on subsequent appeal to higher court, see "Appeal and Error," § 1097.
- Effect of findings below on trial de novo in appellate court, see "Appeal and Error," § 895.
- Effect of findings by court, without judgment, as bar to another action, see "Judgment," § 574.
- Errors favorable to complaining party, see "Appeal and Error," § 1033.
- Error waived in appellate court, see "Appeal and Error," § 1078.
- Establishment of title to land after loss or destruction of record, see "Records," § 18.
- Estoppel by findings, see "Estoppel," § 7.
- Harmless error in findings by court or referee, see "Appeal and Error," § 1071.
- In action for injuries inflicted by animals, see "Animals," § 74.
- In actions for reward, see "Rewards," § 15.
- In contempt proceedings, see "Contempt," § 61.
- In deportation proceedings, see "Aliens," § 32.
- In partnership accounting, see "Partnership," § 342.
- In proceedings for accounting of guardian, see "Guardian and Ward," § 158.
- In proceedings for appointment of guardian, see "Guardian and Ward," § 13.
- In proceedings to establish boundaries, see "Boundaries," § 42.
- In proceedings to establish title by adverse possession, see "Adverse Possession," § 117.
- In proceeding to foreclose mortgage, see "Mortgages," § 41.
- Insufficiency of findings as ground for remanding case, see "Appeal and Error," § 1177.
- In United States Court of Claims, see "Courts," § 468.
- Irregularities or defects, ground for arrest of judgment, see "Judgment," § 265.
- Irregularities or defects ground for new trial, see "New Trial," §§ 57-64.
- Necessity of specific objections in lower court, see "Appeal and Error," § 231.
- On appeal or error, see "Appeal and Error," §§ 1005, 1122.
- On certiorari to review justice's judgment, see "Justices of the Peace," § 208.
- On inquisitions of lunacy, see "Insane Persons," §§ 22, 23.
- On motions, see "Motions," § 40.
- On trial of disputed claim against estate of decedent, see "Executors and Administrators," § 251.
- Presentation of exceptions taken in lower court, see "Appeal and Error," § 549.
- Presumption on appeal in favor of findings by lower court, see "Appeal and Error," § 931.
- Reversal for errors in findings and conclusions, see "Appeal and Error," § 1169.
- Review as depending on assignment of errors, see "Appeal and Error," § 719.
- Review in absence of evidence from record, see "Appeal and Error," § 695.
- Review in appellate court, see "Appeal and Error," §§ 219, 220, 265, 266, 268, 293, 294, 501, 527, 547, 548, 704, 740, 841, 842, 931, 987-1024, 1071; "Criminal Law," §§ 1158-1160, 1175.
- Review of findings in exclusion or deportation proceedings, see "Aliens," § 32.
- Review of findings not embraced within issues, see "Appeal and Error," § 846.
- Review on appeal of findings in admiralty causes, see "Admiralty," § 118.
- Scope of review as depending on whether findings are general or special, see "Appeal and Error," § 850.
- Scope of review on appeal from decision on motion for new trial, see "Appeal and Error," § 867.
- Specification of error in finding, see "Appeal and Error," § 731.
- Sufficiency of evidence in general to support, see "Evidence," § 597.
- Technical errors as ground for reversal, see "Appeal and Error," § 1170.

## FINES.\*

*Scope-Note.*

[INCLUDES pecuniary punishments imposed by sentences of courts on convictions of crime; nature and scope of such punishment in general; constitutional and statutory provisions relating thereto; in what cases and for what offenses fines are imposed in general; jurisdiction over and proceedings for enforcement of fines; review of proceedings; costs in such proceedings; payment or working out fines and costs, and imprisonment for nonpayment thereof; discharge from fines or from imprisonment therefor; disposition of moneys received for fines; and recovery of fines paid.

[EXCLUDES penalties recoverable by action for violations of statutes (see "*Penalties*"); fines for particular offenses (see specific heads); punishment of contempt of court by fine (see "*Contempt*"); and effect of pardon or commutation of sentence (see "*Pardon*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Constitutional and statutory provisions.
- § 1½. Imposition and liability in general.
- § 2. Enforcement in general.
- § 3. Lien of judgment.
- § 5. Application of money deposited as bail.
- § 6. Execution against property.
- § 7. Actions.
- § 8. Recovery by indictment.
- § 9. Arrest of defendant.
- § 10. Imprisonment on nonpayment.
- § 11. — In general.
- § 12. — In satisfaction of fine.
- § 13. — Discharge of prisoner.
- § 14. Working out fine.
- § 15. — In general.
- § 16. — Under convict bond.
- § 17. — Inability to labor.
- § 17½. Death of defendant.
- § 18. Remission.
- § 19. Payment.
- § 20. Disposition of proceeds.
- § 21. Rights and remedies of informers.

*Cross-References.*

See "*Penalties*."

Act providing for enforcement of fine by imprisonment as contravening constitution prohibiting imprisonment for debt, see "*Constitutional Law*," § 83.

Appellate jurisdiction dependent on amount of fine, see "*Criminal Law*," § 1020.

Appellate jurisdiction of cases involving validity of fines, see "*Courts*," §§ 224, 231.

Collection of costs in criminal cases from fines recovered, see "*Costs*," § 320.

Effect of pardon, see "*Pardon*," § 9.

Effect of partial invalidity of statute relating to, see "*Statutes*," § 64.

Enforcement against homestead, see "*Homestead*," § 105.

Excessive fines, see "*Criminal Law*," § 1214.

Excessive fines ground for new trial, see "*Criminal Law*," § 913.

For contempt, see "*Contempt*," §§ 70-82.

Forgery of convict bond, see "*Forgery*," §§ 12, 29, 34, 42.

\*Annotation: Words and Phrases, same title.

For nonpayment of assessments on building and loan association stock, see "Building and Loan Associations," § 21.  
 For nonpayment of loan by member of building and loan association, see "Building and Loan Associations," § 35.  
 For refusal of witness to answer questions before grand jury, see "Grand Jury," § 36.  
 For usurpation of street railroad franchise, see "Street Railroads," § 62.  
 For violation of convict labor contract, see "Convicts," § 9.  
 For violations of liquor laws, lien of fine on premises used, see "Intoxicating Liquors," § 243.  
 Imposition on baseball player under terms of contract of employment, see "Master and Servant," § 73.  
 Imposition on policeman for neglect of duty, see "Municipal Corporations," § 189.  
 Imposition on servant under terms of contract of employment, see "Master and Servant," § 73.  
 Interest on judgments for fines, see "Interest," § 22.  
 Judgment imposing fine as claim against bankrupt's estate, see "Bankruptcy," § 315.  
 Laws applying funds collected to particular purposes as creating contract which cannot be impaired, see "Constitutional Law," §§ 120-144.

Liability of justices of the peace for failure to pay over fines collected, see "Justices of the Peace," § 30.  
 Limitation of prosecutions, see "Criminal Law," § 147.  
 Of members of beneficial association, see "Beneficial Associations," § 13.  
 Of members of club, see "Clubs," § 7.  
 Of members of corporations in general, see "Corporations," § 176.  
 Of seamen, see "Seamen," § 21.  
 Payment of fine in city warrants, see "Municipal Corporations," § 899.  
 Power of police judge to collect fines, see "Courts," § 188.  
 Recovery of payment made under duress, see "Payment," § 87.  
 Repeal of act appropriating fines, forfeitures and penalties to the support of a seminary as impairing charter rights, see "Constitutional Law," § 129.  
 Repeal of act relating to claims against fine and forfeiture fund as impairing obligation of contracts, see "Constitutional Law," § 121.  
 Statement in sentence, see "Criminal Law," § 995.  
 Validity of conveyance to prevent recovery of fine, see "Fraudulent Conveyances," § 300.  
 Vested rights in, see "Constitutional Law," § 104.

## § 1. Constitutional and statutory provisions.

### Cross-Reference.

Effect of partial invalidity of statute, see "Statutes," § 64.

## § 1½. Imposition and liability in general.

### Annotation.

Right of labor union to impose fine on members as means of inducing them to join in strike.—23 L. R. A. (N. S.) 1236, note.

Fine as cruel or unusual punishment.—35 L. R. A. 567, note.

Exemption of homestead from liability to fine.—24 L. R. A. 790, note.

(a) Under a federal statute (Act of Congress, May 10, 1800), the U. S. Circuit Court for Maryland, *held*, that since the statute directed a fine and imprisonment to be imposed for the offense, the imposition of a fine only would be erroneous.—*United States v. Vickery*, 1 H. & J. 427.

## § 2. Enforcement in general.

### Annotation.

Fining attorney during trial as prejudicing rights of party.—42 L. R. A. (N. S.) 428, note.

## §§ 3-9. (See Analysis.)

## §§ 10-13. Imprisonment on nonpayment.

### Annotation.

Imprisonment for fine as imprisonment for debt.—34 L. R. A. 651, note.

(a) A fine inflicted as a punishment is not a debt within the meaning of the Constitution prohibiting imprisonment for debt.—*State v. Mace*, 5 Md. 387. (See Const. art. 3, § 38.) [Cited and annotated in 34 L. R. A. 635, 636, 651, on constitutionality of imprisonment for debt; in 27 L. R. A. (N. S.) 754, on suit for statutory penalty as civil or criminal prosecution.] (See *Ruggles v. State*, 120 Md. 553, 87 Atl. 1080.)

## §§ 14-18. (See Analysis.)

## § 19. Payment.

### Cross-References.

As defeating defendant's right to appeal, see "Criminal Law," § 1026.

Bonds for payment of, on appeal, see "Criminal Law," § 1076.

Recovery of payment made under duress, see "Payment," § 87.

## § 20. Disposition of proceeds.

### Cross-References.

Laws applying funds collected to particular purposes as creating contract which cannot be impaired, see "Constitutional Law," §§ 120-144.

Liabilities of justices of the peace for failure to pay over fines collected, see "Justices of the Peace," § 30.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Limitations applicable to action by county to recover fines collected by city, see "Limitation of Actions," § 28.

(a) Under act 1892, c. 411, Balto. City Code 1906, Charter, § 438, giving the city one-half of all fines imposed by the Criminal Court of Baltimore, and Code, art. 87, §§ 39, 42, and Const. art. 15, § 1, making it the duty of sheriffs to pay all fines in excess of their salary and office expenses to the state treasurer, the sheriff of Baltimore must pay the balance, after paying half to the city and after paying informers, to the state.—*State v. Green*, 120 Md. 681, 87 Atl. 1101. (See Balto. City Rev. Charter, § 438.)

### § 21. Rights and remedies of informers.

(a) The rights of any one entitled to a portion of any fine as informer become fixed when the fine is adjudged, and, where no one laid claim to the informer's share during a period of seven years, it is convincing proof that no one existed who could legally lay claim to the informer's share.—*State v. Green*, 120 Md. 681, 87 Atl. 1101.

(b) The burden of proving his right to the informer's portion of a fine is on the claimant, and, likewise, one claiming the right to withhold fines from the state for informers has the burden of proving their existence and right.—*State v. Green*, 120 Md. 681, 87 Atl. 1101.

(c) Where a person told the marshal of police that he thought a policy business was carried on in a certain building, and, in consequence, the police raided the premises, and found there the appliances for such business, and certain persons, whom they arrested, and from some of whom was obtained evidence of the guilt of two, who pleaded guilty and were fined, such person, as informer, was entitled to one-half the fines, under Code 1888, art. 27, § 176, enacting that if any person shall keep a house for selling lottery tickets he shall be subject to a penalty of \$1,000, one-half of which shall go to "the informer."—*Sanner v. State*, 85 Md. 523, 37 Atl. 165. (See Code 1911 [vol. 3], art. 27, § 306.)

(d) Code 1888, art. 38, § 2, provides that all fines and penalties, when recovered, shall be paid to the county or city where the same may be imposed, unless directed to be paid

otherwise by the law imposing them, but if there be an informer he shall have half, unless otherwise provided. *Held*, that the state had no interest in, and could not maintain, an action against a sheriff to recover fines which he collected and claimed as informer's fees.—*Sanner v. State*, 83 Md. 648, 35 Atl. 158. (See Code 1911, art. 38, § 2.)

(c) Where an act awards one-half of a fine to the county, and one-half to the informer, and the whole is adjudged to the state, the judgment will not be reversed at the instance of the person convicted.—*Rawlings v. State*, 2 Md. 201.

## FINGER PRINTS.

### Cross-References.

Expert testimony, see "Criminal Law," § 472.  
Opinion evidence, see "Criminal Law," § 472.  
Photographs as evidence, see "Criminal Law," § 438.

## FIREARMS.\*

### Cross-References.

See "Weapons."  
Accidental discharge of firearms as constituting assault, see "Assault and Battery," § 16.  
Assault by pointing firearms at another, see "Assault and Battery," §§ 49, 50, 53.

## FIRE BOATS.

### Cross-References.

Admiralty jurisdiction of action against city for injury to vessel by fire boat, see "Admiralty," § 19.  
Exemption of fire boat belonging to city, from seizure in rem, see "Admiralty," § 27.

## FIRE DEPARTMENT.\*

### Cross-Reference.

See "Municipal Corporations," §§ 194-202.

## FIRE DISTRICT.\*

### Cross-References.

See "Counties," § 18; "Municipal Corporations," § 2; "Towns," §§ 19, 23, 24, 39.  
Right to vote for officers of, see "Elections," § 7.

## FIRE ESCAPES.

### Cross-References.

Delegation of power to regulate, see "Constitutional Law," § 63.  
Municipal regulations, see "Municipal Corporations," § 603.  
On hotels, see "Innkeepers," §§ 2, 5.  
Ordinance requiring buildings of certain classes to be equipped with fire escapes as interference with vested rights, see "Constitutional Law," § 93.

\*Annotation: Words and Phrases, same title.

Regulations for protection of employees, see "Master and Servant," § 115.  
State regulations, see "Health," § 32.

### **FIRE INSURANCE.\***

*Cross-Reference.*

See "Insurance."

### **FIRE LIMITS.**

*Cross-Reference.*

See "Municipal Corporations," § 603.

### **FIRE LINE.**

*Cross-Reference.*

Establishing of, taking property for public use, see "Eminent Domain," § 2.

### **FIREMEN.\***

*Cross-Reference.*

See "Municipal Corporations," §§ 194-202.

### **FIREMEN'S RELIEF ASSOCIATION.**

*Cross-Reference.*

See "Beneficial Associations."

## **FIRES.\***

*Scope-Note.*

[INCLUDES burning or setting fire to property other than buildings and similar structures and their contents, and refusing to aid in or obstructing extinguishment of fires; nature and extent of criminal responsibility therefor, and grounds of defense; prosecution and punishment of such acts as public offenses; and civil liability for willful burning or setting fire.

[EXCLUDES liabilities for injuries from fire caused by negligence (see "Negligence").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and elements of offenses in general.
- § 2. Statutory provisions.
- § 3. Burning or setting fire.
- § 4. Indictment or information.
- § 5. Evidence.
- § 6. Trial and review.
- § 7. Civil liability for willful or criminal burning or setting fire.
- § 8. Extinguishment of fires in fields or woods.

*Cross-References.*

See "Arson."

Civil liability for injuries from fires caused by negligence in general, see "Negligence," § 21.

Civil liability for injuries from fires caused by operation of railroad, see "Railroads," §§ 453-488.

Compensation for saving vessels or cargoes from loss by fire, see "Salvage," §§ 10, 31.

Danger from fire as element of compensation for property injured by construction and operation of railroad, see "Eminent Domain," § 111.

Entry on land to extinguish fire, see "Trespass," § 26.

Fire districts or precincts in towns, see "Towns," §§ 19, 23, 24, 39.

Health regulations as to fireproof buildings and fire escapes, see "Health," § 32.

Joinder of insurer and insured in action to recover for negligent setting of fire, see "Parties," §§ 16, 20.

Liability of carrier for injury to goods by fire, see "Carriers," §§ 107-137.

Making person negligently setting fire to property liable for damages as taking property without just compensation, see "Eminent Domain," § 2.

Municipal fire department, see "Municipal Corporations," §§ 194-202.

Municipal regulations for prevention of and protection against fire, see "Municipal Corporations," § 603.

Opinion evidence as to danger of leaving fire, see "Evidence," § 481.

Regulations for protection of employees, see "Master and Servant," § 115.

Setting fire to woods, see "Woods and Forests," § 11.

Statutory and municipal regulations as to fires on railroad rights of way, see "Railroads," § 249.

Tax for prevention of fires as violative of requirement of uniformity, see "Taxation," § 44.

\*Annotation: Words and Phrases, same title.



### § 1. Nature and elements of offenses in general.

(a) The act of burning a stack of hay is not a felony, either by common law or by the acts of 1809, c. 138, and 1845, c. 381.—*Black v. State*, 2 Md. 376. (See Code [vol. 3], art. 27, § 11.)

### § 2. Statutory provisions.

*Cross-Reference.*

See ante, § 1.

*Annotation.*

Validity of regulations for fire protection other than building regulations.—41 L. R. A. (N. S.) 456, note.

### § 3. Burning or setting fire.

*Cross-Reference.*

See ante, § 1.

*Annotation.*

Liability of master for act of servant in setting out fire while clearing land.—47 L. R. A. (N. S.) 1116, note.

Liability of employer for acts of independent contractor in setting out fire.—17 L. R. A. (N. S.) 788; 38 L. R. A. (N. S.) 175, notes.

### § 4. Indictment or information.

*Cross-Reference.*

Negating statutory exceptions, see "Indictment and Information," § 111.

### § 5. Evidence.

### § 6. Trial and review.

(a) The instrument in this case charged that the traverser "feloniously, unlawfully," etc., did burn a certain stack of hay, "against the form of the act of Assembly," etc. The jury rendered a verdict that he did "feloniously, unlawfully," etc., burn said stack of hay. *Held*, that, as the offense charged was not a felony, no valid judgment could be pronounced on such an indictment and verdict.—*Black v. State*, 2 Md. 376. (See Code [vol. 3], art. 27, § 11.)

### § 7. Civil liability for willful or criminal burning or setting fire.

*Cross-References.*

Civil liability for injuries from fires caused by negligence in general, see "Negligence," § 21.

Civil liability for injuries from fires caused by operation of railroad, see "Railroads," §§ 453-488.

*Annotation.*

Liability for setting fires which spread to property of others.—21 L. R. A. 255; 36 L. R. A. (N. S.) 194, notes.

### § 8. Extinguishment of fires in fields or woods.

#### FIREWORKS.\*

*Cross-References.*

Civil action for unlawfully discharging fireworks, see "Action," § 5.

Injuries from discharge, see "Explosives," § 11.

Liability of seller of, for acts of servant, see "Master and Servant," § 301.

Municipal regulations, see "Municipal Corporations," § 632.

#### FIRMS.\*

*Cross-Reference.*

See "Partnership."

#### FISCAL COURT.\*

*Cross-References.*

See "Counties," §§ 38-60.

Substitution in pending actions of successors in office, see "Abatement and Revival," § 47.

#### FISCAL MANAGEMENT.

*Cross-References.*

Of counties, see "Counties," §§ 149-196.

Of District of Columbia, see "District of Columbia," §§ 30-35.

Of municipal corporations, see "Municipal Corporations," §§ 858-1000.

Of school districts, see "Schools and School Districts," §§ 90-111.

Of states, see "States," §§ 113-168½.

Of territories, see "Territories," §§ 28-30.

Of United States, see "United States," §§ 79-91.

## FISH.\*

### Scope-Note.

[INCLUDES animals inhabiting the water; regulations for their preservation; and nature and incidents of rights of fishery.

[EXCLUDES fishing on Sunday (see "Sunday").

[For complete list of matters excluded, see cross-references, post.]

### Analysis.

§ 1. Nature of property.

§ 2. What is fish.

\*Annotation: Words and Phrases, same title.

- § 3. Fish in public waters.
- § 4. Seal fisheries.
- § 5. Private rights of fishery.
- § 6. Injury to or destruction of fish.
- § 7. Oyster and clam beds.
- § 8. Power to protect and regulate.
- § 9. Constitutional and statutory provisions.
- § 10. Licenses.
- § 11. Fish wardens and other officers.
- § 12. Preservation and propagation.
- § 13. Offenses.
- § 14. Penalties for violations of regulations.
- § 15. Criminal prosecutions.
- § 16. Searches and seizures.
- § 17. Rights of property and contracts as to fish illegally taken.

### *Cross-References.*

See "Game."

Appellate jurisdiction of cases involving constitutionality of fish laws, see "Courts," § 250.

Applicability of fish laws to Indians, see "Indians," § 32.

Condemnation of right to fish, see "Eminent Domain," § 45.

Constitutionality of act for protection of fish, taking property without due process of law, see "Constitutional Law," § 278.

Constitutionality of act prohibiting possession of fish taken outside the state, regulation of interstate commerce, see "Commerce," § 55.

Constitutionality of act relating to taking and transportation of fish, taking property without just compensation, see "Eminent Domain," § 2.

Constitutionality of act requiring erection of fishways, taking property without compensation, see "Eminent Domain," § 2.

Constitutionality of statutes, class legislation, see "Constitutional Law," § 208.

Constitutionality of statutes, delegation of legislative powers to board of fish commissioners, see "Constitutional Law," § 62.

Constitutionality of statutes, denial of equal protection of laws, see "Constitutional Law," § 236.

Constitutionality of statutes, ex post facto laws, see "Constitutional Law," § 199.

Constitutionality of statutes, general or local nature of laws, see "Statutes," § 77. Constitutionality of statutes, grant of special privileges, see "Constitutional Law," § 205; "Statutes," § 79.

Constitutionality of statutes, impairment of obligation of contract, see "Constitutional Law," § 175.

Constitutionality of statutes imposing license taxes, see "Licenses," § 7.

Constitutionality of statute prohibiting transportation of fish, violative of guaranty of life, liberty, and property, see "Constitutional Law," § 82.

Constitutionality of statutes, subjects and titles, see "Statutes," § 110½.

Custom as to fishing, see "Customs and Usages," § 8.

Destruction of fish traps as trespass, see "Trespass," § 7.

Fish as subject of commerce, see "Commerce," § 15.

Forbidding fishing on Sunday, see "Sunday," § 2.

Form of action for trespass, see "Trespass," § 18.

Larceny of fish, see "Larceny," § 5.

Taxation, see "Taxation," § 180.

Taxation, uniformity, see "Licenses," § 7; "Taxation," §§ 40, 42.

Trespass on fishery rights, see "Trespass," §§ 1, 45.

### § 1. Nature of property.

### § 2. What is fish.

### § 3. Fish in public waters.

(a) Where, in trespass for the alleged wrongful entry on plaintiff's land and catching fish confined thereon, it appears that the fish were taken in a cove covered by water within the ebb and flow of the tide, being

confined within the cove by a wire fence extending across its mouth, a requested prayer that the verdict must be for plaintiff was properly rejected, even though plaintiff had caught and placed some of the fish within the cove, as the fish, though confined, were in tide waters.—*Sollers v. Sollers*, 77 Md. 148, 26 Atl. 188, 39 Am. St. Rep. 404, 20 L. R. A. 94. [Cited and annotated in 39 L. R. A.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

583, on governmental control over right of fishery; in 60 L. R. A. 512, on right to fish.]

(b) An indictment under act 1845, c. 148, for fishing with gill nets in the Potomac river, is defective in not averring that said act has been assented to by Virginia, according to the eighth article of the compact recited in act 1785, c. 1.—*State v. Hoofman*, 9 Md. 28. (See Code, art. 39, §§ 36-59; Id. [vol. 3], art. 39, §§ 59A-59F.) [Cited and annotated in 60 L. R. A. 505, on right to fish.]

(c) The right of public fishery remains unimpaired by a grant from the sovereign of land covered by navigable water.—*Wilson v. Inlocs*, 6 Gill 121.

(d) Merely fishing in public waters at a particular place, no matter for how long a time, raises no presumption of the grant of an exclusive right, because the person so fishing exercises prima facie only a right which belongs to him in common with all others, while, for the purpose of presuming a grant of an exclusive right, it must appear that all others have been kept out by him and his grantors from fishing in such place in any manner.—*DeLaware & Md. R. Co. v. Stamp*, 8 G. & J. 479, 29 Am. Dec. 561. [Cited and annotated in 14 L. R. A. 386, on prescriptive rights of fishery; in 60 L. R. A. 496, 524, on right to fish; in 17 L. R. A. (N. S.) 1236, on injunction as to hunting or fishing on navigable waters; in 33 L. R. A. (N. S.) 767, on private right of action for obstruction of navigable stream.] *Day v. Day*, 4 Md. 262. [Cited and annotated in 14 L. R. A. 386, on prescriptive rights of fishery; in 60 L. R. A. 496, 524, on right to fish.]

#### § 4. Seal fisheries.

#### § 5. Private rights of fishery.

##### Annotation.

Right to fish.—60 L. R. A. 481, note.

(a) Where, in trespass for the alleged wrongful entry on plaintiff's land and catching fish confined thereon, it appears that the land was covered by navigable water, the granting of defendant's requested prayer that plaintiff could not recover unless he had printed in a newspaper or posted notices in public places near the land of the fact that he had placed fish thereon for breeding and cultivating, as required by Code 1888, art. 39, § 76, is reversible error, as such statute refers only to fish placed in artificial ponds.

—*Sollers v. Sollers*, 77 Md. 148, 26 Atl. 188, 39 Am. St. Rep. 404, 20 L. R. A. 94. (See Code 1911, art. 39, § 75.) [Cited and annotated, see supra, § 3.]

#### § 6. Injury to or destruction of fish.

#### § 7. Oyster and clam beds.

##### Cross-References.

See ante, § 5; post, §§ 8, 9, 10, 13, 15.

Conformity of findings of court to pleadings in action for damages to, see "Trial," § 396.

Injury to oyster bed by construction of bridge, see "Bridges," § 23.

Larceny of oysters from oyster beds, see "Larceny," §§ 2, 5, 26.

Liability of state for costs in suit to vacate oyster-bed entry, see "States," § 215.

Mandamus to oyster commissioners, see "Mandamus," § 73.

Taxation for levee purposes, see "Levees," § 23.

Taxation of oysters on public lands, see "Taxation," § 180.

Tax on oysters as violative of requirement of uniformity, see "Taxation," § 42.

Venue of action for conversion, see "Venue," § 5.

(a) Code 1904, art. 72, § 46, provides for the appropriation of artificial oyster beds, and § 48 prohibits the taking of oysters therefrom. Section 7 declares that all oysters taken from any of the waters of the state shall be culled on their natural bed or bar as taken, and all shells shall be returned, including all oysters whose shells measure less than 2½ inches in length from hinge to mouth. Section 8 prohibits any person from having oysters in possession containing more than 5 per cent. of shells or oysters less than 2½ inches from hinge to mouth. Held, that § 8 was applicable to oysters taken from private beds, as well as the natural beds and bars of the state.—*Windsor v. State*, 103 Md. 611, 64 Atl. 288. (See Code 1911, art. 72, §§ 8, 9, 49.) [Cited and annotated in 33 L. R. A. (N. S.) 76, on injury to fishing right as damages from pollution; in 34 L. R. A. (N. S.) 281, on statutory prohibition of pollution to protect fishery.]

(b) Code 1888, art. 72, § 46, as enacted by act 1894, c. 380, confers on owners of land bordering on any waters the right to appropriate five-acre water lots for oyster beds, and provides that any citizen can appropriate a five-acre lot for the same purpose in waters in his county not located, and that no natural beds of oysters shall be so

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

located, and, should any one be charged with appropriating any natural bed, the question may at once be submitted to the circuit judge, who shall summarily decide the case, and his decision, if in favor of the party appropriating the five acres, shall be recorded, and shall be conclusive evidence of title thereto. *Held*, only to authorize the court to summarily decide the question as to the existence of natural beds at the places of private location, and the judge, in such a proceeding, cannot decide that a private location is void for any other reason.—*Travers v. Dean*, 98 Md. 72, 56 Atl. 338. (See Code 1911, art. 72, § 47.)

(c) Section 46 of the general oyster law (act 1894, c. 380) gives any citizen of full age the right to locate a lot of five acres for an oyster bed, in any waters not appropriated, and not belonging exclusively, under its provisions, to the riparian owner, and provides that 12 months' peaceable possession shall constitute title thereto. Section 47 provides that riparian owners shall have the exclusive right to use all creeks or inlets which are less than 100 yards wide at their mouth at low water, and all creeks, etc., exceeding such width, "so soon as said creek, cove or inlet, in making into said land or lands, shall become 100 yards in width at low water." *Held*, that one, not the owner of the land, who locates a bed in a creek more than 100 yards in width at its mouth, under § 46, and acquires title thereunder by possession, holds such title subject to the superior right of the landowner should the creek thereafter become less than 100 yards in width at its mouth at low water.—*Powell v. Wilson*, 85 Md. 347, 37 Atl. 216. (See Code, art. 72, §§ 47, 48.) [Cited and annotated in 3 L. R. A. (N. S.) 205, 206, on injunction against trespass on, or interference with, oyster beds.]

(d) Equity has jurisdiction of suit by a riparian owner on a creek which has become less than 100 yards wide at its mouth, whereby exclusive rights therein are vested in such owner (act 1894, c. 380, § 47), to enjoy use of an oyster bed located therein while such width was more than 100 yards.—*Powell v. Wilson*, 85 Md. 347, 37 Atl. 216. (See Code, art. 72, § 48.) [Cited and annotated, see supra.]

(e) One who has located an oyster bed in a creek, and has planted oysters thereon, has a reasonable time to remove the same, with their increase, after exclusive rights in the creek vest in the riparian owner, under act 1894, c. 380, § 47, by the mouth of the creek becoming less than 100 yards wide.—*Powell v. Wilson*, 85 Md. 347, 37 Atl. 216. (See Code, art. 72, § 48.) [Cited and annotated, see supra.]

(f) Act 1894, c. 380, § 46, gives the owner of land bordering on navigable waters, the lines of which extend into the waters, the exclusive privilege of using same for protecting oysters within the lines of his own land, and provides that any owner of land "lying and bordering" on any waters may locate "in any of the waters adjoining his lands," one lot of five acres for such purpose; that any citizen may locate one lot of five acres in any waters not located or appropriated, provided 30 days' notice in writing be given the owner or occupant of land "bordering" on said waters "proposed to be located"; and if said owner or occupant fail to locate the waters mentioned in said notice within the 30 days, it shall be open to any one. *Held*, that the right to such priority belongs to him whose lands, lying on the waters, are nearest to the proposed location, and owners of other lands are not entitled to the 30 days' notice of such proposed location.—*Hardy v. Moddor*, 85 Md. 547, 37 Atl. 222. (See Code, art. 72, § 47.)

(g) Where locators of oyster lots placed on the shore, on unoccupied land lying on the waters nearest to the proposed location, a notice stating their intention to locate the lots within 30 days (act 1894, c. 380, § 46), the notice was sufficient; since, if the land was vacant, it was not necessary to give any notice, and, if there was an owner unknown to such locators, all that was within their power was to post the notice on the land.—*Hardy v. Moddor*, 85 Md. 547, 37 Atl. 222. (See Code, art. 72, § 47.)

(h) Under Code 1888, art. 72, § 39, providing, in regard to the appropriation of waters for bedding oysters, that, if the appropriator be charged with wrongfully locating a natural bed of oysters, the question may be submitted to the Circuit Court, whose

decision, after notice to parties interested, "shall be conclusive evidence" in regard to the title to the waters appropriated, the jurisdiction of the court being a special jurisdiction, and no appeal being expressly granted, its decision is not appealable.—*Jackson v. Bennett*, 80 Md. 76, 30 Atl. 612. (See Code 1911, art. 72, § 47.)

(i) Under act 1886, c. 296, § 44, only five acres of the waters of the state are allowed to be located for the planting of oysters, and no purchaser can take a valid title to a greater number through the instrumentality of others, nor can a nonresident locate a lot for this purpose, whether he be sole or part owner of any land in this state.—*Hess v. Muir*, 65 Md. 586, 5 Atl. 540, 6 Atl. 673. (See Code, art. 72, § 47.) [Cited and annotated in 45 L. R. A. 238, on title to land between high and low water mark; in 60 L. R. A. 505, 518, 520, on right to fish; in 3 L. R. A. (N. S.) 207, on injunction against trespass on, or interference with, oyster beds; in 26 L. R. A. (N. S.) 794, on what discrimination as to persons permissible in fish and game laws.]

(j) The privilege of locating oyster beds has no elements of a grant by patent, but is simply a license, revocable at the pleasure of the Legislature, and is merely a personal privilege to the recipient, neither inheritable nor assignable.—*Hess v. Muir*, 65 Md. 586, 5 Atl. 540, 6 Atl. 673. [Cited and annotated, see supra.]

#### § 8. Power to protect and regulate.

##### Annotation.

Governmental control over right of fishery.—39 L. R. A. 581, note.

#### § 9. Constitutional and statutory provisions.

##### Cross-References.

Class legislation, see "Constitutional Law," § 208.

Delegation of legislative powers, see "Constitutional Law," § 62.

Due process of law, see "Constitutional Law," § 278.

Equal protection of laws, see "Constitutional Law," § 236.

Ex post facto laws, see "Constitutional Law," § 199.

Impairment of obligation of contracts, see "Constitutional Law," § 175.

Implied repeal by amendatory act, see "Statutes," § 164.

Interstate commerce, see "Commerce," § 55.

Prohibition of transportation of fish as repugnant to guaranty of life, liberty,

and property, see "Constitutional Law," § 82.

Special legislation, see "Statutes," §§ 77, 79.

Special privileges and immunities, see "Constitutional Law," § 205.

Subject and title of act relating to licensing fishing boats, see "Statutes," § 110½.

Taking private property without compensation, see "Eminent Domain," § 2.

##### Annotation.

Statutory prohibition of pollution of water to protect fishery.—1 L. R. A. (N. S.) 752; 34 L. R. A. (N. S.) 286, notes.

(a) Code Pub. Loc. Laws, art. 3, § 101, applicable to Baltimore county, declaring it unlawful for any person to fish in certain rivers in Baltimore county, or in Chesapeake Bay within one mile of the entrance of said rivers into the same, with seine or nets, except from the shore, in the usual and customary manner, is within the police powers of the state, and not unconstitutional.—*Hughes v. State*, 87 Md. 298, 39 Atl. 747. [Cited and annotated in 60 L. R. A. 482, 502, on right to fish.]

(b) Act 1874, c. 181, remodeling the oyster laws, and fixing the punishment for their violation and the manner of imposing it, impliedly repealed act 1872, c. 241, entitled "An act to protect oysters in the waters of Wicomico county," and providing for the seizure of boats used by persons violating the law.—*Willing v. Bozman*, 52 Md. 44. (See Code, art. 72, § 47.)

(c) Code 1860, art. 71, §§ 17, 18, authorizing any citizen of a county bordering on the waters of the state to locate and appropriate within the waters thereof any area not exceeding one acre for the purpose of depositing and bedding oysters, and providing a penalty for the unlawful removal of oysters so deposited, is not unconstitutional, as in derogation of the public right of fishery.—*Phipps v. State*, 22 Md. 380, 85 Am. Dec. 654. (See Code 1911, art. 72, § 47.) [Cited and annotated in 60 L. R. A. 517, 518, on right to fish.]

(d) By Code 1860, art. 71, §§ 17, 18, authority was given to any citizen of any county bordering on the waters of this state to locate and appropriate within the waters thereof any area, not exceeding one acre, for the purpose of depositing and bedding oysters, on condition that the area so located

shall not interfere with certain reserved rights, nor impede navigation, and that it shall be marked out by proper bounds, and a written description thereof, under oath, recorded in the office of the clerk of the Circuit Court of the proper county; and for the unlawful removal of oysters so deposited a penalty was provided. *Held*, that the act was not repealed by act 1862, c. 129, providing "that no patent should issue for land covered by navigable waters."—*Phipps v. State*, 22 Md. 380, 85 Am. Dec. 654. (See Code 1911, art. 54, § 49; art. 72, § 47.) [Cited and annotated, see supra.]

(e) Act 1833, c. 254, and act 1837, c. 310, are in *pari materia*, having one common object, to wit, to prevent the destruction of oysters, and are to be construed together as parts of a system; and the appeal to the County Court from the judgment of the magistrate condemning the vessel, given by the former act, is not repealed by the latter.—*State v. Mister*, 5 Md. 11. (See Code, art. 72, §§ 1, et seq.; *Id.* [vol. 3], art. 72, § 6, et seq.; act 1916, art. 72, §§ 69, 70-72, 75.)

## § 10. Licenses.

### Cross-References.

Oyster and clam privileges, see ante, § 7.  
Double taxation, see "Licenses," § 7.  
Origin of revenue bills, see "Statutes," § 6.  
Uniform taxation, see "Licenses," § 7.

### Annotation.

Effect of license to plant shell fish.—6 L. R. A. (N. S.) 247, note.  
License of right to take oysters in public waters.—60 L. R. A. 517, note.

(a) Act 1894, c. 380, §§ 66, 67, requiring every one engaged in packing or canning oysters to take out a license, and in his application therefor to state the number of bushels he expects to pack for the year, and providing that for each 1,000 bushels packed in addition to the amount stated he shall pay a further tax, and making a failure to take out the license or pay the tax a misdemeanor, applies to oysters caught in and shipped from another state.—*Applegarth v. State*, 89 Md. 140, 42 Atl. 941. (See Code, art. 72, §§ 79, 80.)

## § 11. Fish wardens and other officers.

### Cross-Reference.

Extortion by fish warden, see "Extortion," § 5.

## § 12. Preservation and propagation.

### Cross-Reference.

Certainty of statute, see "Statutes," § 47.

## § 13. Offenses.

### Cross-References.

Evidence, see post, § 15.  
Repeal of statute, see ante, § 9.  
Implied repeal by change of definition of offense or in punishment therefor, see "Statutes," § 165.  
Intent in general, see "Criminal Law," § 21.

(a) Act 1894, c. 380, § 7, relates to the culling of oysters "taken from the waters of the state." Act 1900, c. 380, § 8, makes it a misdemeanor for any person to have in his possession oysters containing more than 5 per cent. of shells, or less than 2½ inches from hinge to mouth. Section 9 declares it unlawful for any person to receive any cargo of oysters unless inspectors are present, and requires a person violating the provision to return the oysters under merchantable size to the beds from which they were taken. *Held*, that § 8, was intended to apply only to oyster beds in waters of the state, and, defendant being indicted thereunder for having oysters in his possession under the merchantable size, it was error to sustain a demurrer to a special plea setting up that the oysters were lawfully taken from the waters of another state.—*Tyler v. State*, 93 Md. 309, 48 Atl. 840, 52 L. R. A. 100. (See Code, art. 72, §§ 7, 8, 9.)

(b) A firm will be held not to have sold its own oysters, but those of its captains, on commission, where, owning boats, it hires a captain for each of them, he to employ a crew and pay running expenses, and to receive 60 per cent. of the gross receipts of oysters, whether caught or bought, less 1½ cents on each bushel brought to market, the firm receiving 40 per cent. of gross receipts, plus said 1½ cents on each bushel brought to market; the firm being notified when a cargo arrives, and it giving notice to buyer, and the oysters being sold by the captain, who receives a statement of the amount sold and the price; the firm paying the captain the amount due him by the buyer, and taking an assignment of his claim against the buyer; all money for supplies and capital for buying oysters being furnished by the firm to the captain, who gives it a note

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

therefor; and the regular fee of commission merchants for selling oysters being 1½ cents per bushel.—*Bramble v. State*, 88 Md. 683, 42 Atl. 222.

#### § 14. Penalties for violations of regulations.

##### *Cross-Reference.*

Powers of fishery commissioners, see ante, § 11.

#### § 15. Criminal prosecutions.

##### *Cross-References.*

Grounds for continuance, see "Criminal Law," § 599.

Indictment and information, disjunctive or alternative allegations, see "Indictment and Information," § 72.

Indictment and information, duplicity, see "Indictment and Information," § 125.

Indictment and information, negating exceptions in statute, see "Indictment and Information," § 111.

Indictment and information, omission of essential words, see "Indictment and Information," § 75.

Joinder of offenses in summary trials, see "Criminal Law," § 248.

Jurisdiction, see "Criminal Law," §§ 90, 94.

Presentation in lower court of grounds of review, see "Criminal Law," § 1030.

Punishment and prevention of crime, see "Criminal Law," § 1213.

Responsiveness of answer to interrogatories submitted to jury, see "Criminal Law," § 882.

Self-serving declarations of accused, see "Criminal Law," § 413.

Summary trials, see "Criminal Law," § 252.

Testimony of accomplices and codefendants, see "Criminal Law," § 511.

Transfer to other court, see "Criminal Law," § 101.

Venue, see "Criminal Law," § 107.

(a) Though the oyster law (act 1900, c. 380) provides merely for a fine for having in possession unmerchantable oysters, nevertheless, under Code 1888, art. 38, § 1, declaring that, whenever any fine or penalty is imposed by any act of Assembly for doing any forbidden act, the person shall be sentenced to the fine or penalty and costs, and in default of payment be committed to jail, etc., the court is authorized to sentence a person convicted of a violation of the oyster law to stand committed until the fine imposed is paid.—*Dean v. State*, 98 Md. 80, 56 Atl. 481. (See Code 1911, art. 38, § 1; art. 72, § 9.)

(b) Under act 1900, p. 652, c. 380, § 8, declaring that any person who shall have

oysters in his possession which contain more than 5 per cent. of shells and oysters less than 2½ inches from hinge to mouth shall be guilty of a misdemeanor, and that in ascertaining such percentage the officers of the oyster police force and the measurers and inspectors are authorized to select such amount of oysters from any pile, hole, or bin as they may think proper, and to require the same to be culled, it is not necessary, in a prosecution for having in possession a cargo of unmerchantable oysters, to have culled the entire cargo.—*Dean v. State*, 98 Md. 80, 56 Atl. 481. (See Code, art. 72, § 9.)

(c) Under the oyster law, providing that a fine of twenty-five dollars shall be imposed for having in possession unmerchantable oysters, and, in addition to that, the sum of six cents per bushel for the entire cargo, and a further fine of one additional cent per bushel for each additional 1 per cent. of unmerchantable oysters, it is not necessary, in a prosecution under the law, for the jury to find the quantity of cargo, nor the percentage of unmerchantable oysters it contains; a verdict of guilty being sufficiently certain.—*Dean v. State*, 98 Md. 80, 56 Atl. 481. (See Code, art. 72, §§ 9, 17.)

(d) The provision of Code 1888, art. 72, § 37, authorizing the fishery police to arrest, without delaying to procure a warrant, offenders detected in the act of violating the law, applies to the police force on the water as well as on land.—*Kane v. State*, 70 Md. 546, 17 Atl. 557. (See Code 1911, art. 72, § 45.)

(e) It is sufficient in an indictment under act 1886, c. 206, as applicable to Dorchester county, charging the offense of dredging for oysters in prohibited waters, and having two counts, to specify the day and year on which the offense was committed in the first count, and merely refer to such date in the second.—*Jones v. State*, 68 Md. 613, 13 Atl. 381. (See Code, art. 72, §§ 6, 78, and note; *Id.* [vol. 3], art. 72, § 6.)

(f) Under act 1886, c. 206, as applicable to Dorchester county, permitting the use of licensed boats, not exceeding 10 tons, for taking oysters with scrapes and dredges within certain limits, and making criminally

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

liable any person who shall use any "boat, canoe, or vessel" to take oysters with scrapes or dredges in certain prohibited waters, an indictment need not designate the name or number of such boat or vessel, or describe it as a licensed boat or vessel not exceeding 10 tons burden.—*Jones v. State*, 68 Md. 613, 13 Atl. 381. (See Code, art. 72, §§ 6, 78, and note; *Id.* [vol. 3], art. 72, § 6.)

(g) Under act 1886, c. 206, as applicable to Dorchester county, relating to the offense of dredging for oysters in prohibited waters, and giving to judges of the Circuit Court an original jurisdiction over such offenses, the indictment need not show that defendant was arrested and taken before a justice and elected to be tried by the Circuit Court.—*Jones v. State*, 68 Md. 613, 13 Atl. 381. (See Code, art. 72, §§ 6, 78, and note; *Id.* [vol. 3], art. 72, § 6.)

(h) Under act 1884, c. 518, making it an offense to carry without license oysters taken in the waters of the state, an indictment failing to charge that the oysters were taken in the waters of the state is fatally defective, though it alleges the carrying without license over the waters of the state.—*State v. Insley*, 64 Md. 28, 20 Atl. 1031. (See Code, art. 72, §§ 5, 20, and note.) [*Cited and annotated* in 60 L. R. A. 517, on right to fish.]

(i) Code 1860, art. 71, §§ 17, 18, authorized any citizen of a county bordering on the waters of the state to locate and appropriate within the waters thereof any area not exceeding one acre for the purpose of depositing and bedding oysters, on condition that

the area so located shall not interfere with certain reserved rights or impede navigation, and that it shall be marked out by proper bounds, and a written description thereof, under oath, recorded in the office of the clerk of the Circuit Court of the proper county, and also provided a penalty for the unlawful removal of oysters so deposited. *Held*, that an indictment under the section cited which does not allege the location and appropriation of such area by complainant, and the recording of the written description thereof in the clerk's office before the oysters were removed by the defendant, is defective.—*Phipps v. State*, 22 Md. 380, 85 Am. Dec. 654. (See Code 1911, art. 72, § 47.) [*Cited and annotated* in 60 L. R. A. 517, 518, on right to fish.]

## § 16. Searches and seizures.

### Cross-References.

Deprivation of property without due process of law, see "Constitutional Law," § 319.

Right to jury trial, see "Jury," § 19.

## § 17. Rights of property and contracts as to fish illegally taken.

### Cross-Reference.

Protection of right by injunction, see "Injunction," § 34.

## FISHING BILL.\*

### Cross-Reference.

Bill of discovery, see "Discovery."

## FISSURE VEIN.\*

### Cross-Reference.

See "Mines and Minerals," § 31.

## FIXED DAMAGES.

### Cross-Reference.

See "Damages," §§ 74-86.

# FIXTURES.\*

## Scope-Note.

[INCLUDES chattels affixed or annexed to real property; and rights and liabilities in respect of such fixtures incident to or affected by particular estates or interests in the realty.

[EXCLUDES distinction between real and personal property in general (see "Property").

[For complete list of matters excluded, see cross-references, post.]

## Analysis.

§ 1. Nature and requisites of conversion into realty in general.

§ 2. Articles capable of annexation to realty.

§ 3. Persons who may make annexation.

\*Annotation: Words and Phrases, same title.



- § 4. Intent in making annexation.
- § 5. Purpose or use for which annexation is made.
- § 6. Mode and sufficiency of annexation.
- § 7. ——— Actual.
- § 8. ——— Constructive.
- § 9. Between owner or lienor of land and claimant of chattels.
- § 10. Between persons in family relation and their privies.
- § 11. Between personal representative and heir of decedent and their privies.
- § 12. Between tenant for life and remainderman and their privies.
- § 13. Between landlord and tenant and their privies.
- § 14. ——— In general.
- § 15. ——— Trade fixtures.
- § 16. ——— Agricultural fixtures.
- § 17. ——— Domestic or ornamental fixtures.
- § 18. Between mortgagor and mortgagee of land and their privies.
- § 19. ——— Mortgagee of land and mortgagee of chattels.
- § 20. ——— Mortgagee of land and vendor or vendee of chattels.
- § 21. Between vendor and purchaser of land and their privies.
- § 22. Between seller and buyer of chattels.
- § 23. Between owner of easement and owner of land subject thereto.
- § 24. Between licensor and licensee.
- § 25. Between owner of land and trespasser.
- § 26. Railroad tracks and rolling stock.
- § 27. Agreements.
- § 28. Rights and remedies of creditors and purchasers at execution sales.
- § 29. Effect of severance.
- § 30. Removal.
- § 31. ——— In general.
- § 32. ——— Time and manner of making.
- § 33. ——— Waiver or loss of right.
- § 34. ——— Wrongful removal.
- § 35. Actions relating to fixtures.

#### *Cross-References.*

- |  |  |
|--|--|
| <p>As property subject to taxation, see "Taxation," § 65.</p> <p>As subject of conversion, see "Trove and Conversion," § 2.</p> <p>As subject of mortgage, see "Chattel Mortgages," §§ 16, 121.</p> <p>Compensation for fixtures on appropriation of land for public use, see "Eminent Domain," § 133.</p> <p>Decisions of state courts as authority in federal courts, see "Courts," § 366.</p> | <p>Distinction between real and personal property in general, see "Property," §§ 4, 5.</p> <p>Execution on fixtures, see "Execution," § 25.</p> <p>Larceny of fixtures, see "Larceny," §§ 5, 17.</p> <p>Lien for furnishing, installing, or repairing fixtures, see "Mechanics' Liens," §§ 30-32.</p> <p>Sale or other disposition of fixtures as within statute of frauds, see "Frauds, Statute of," §§ 56, 72.</p> <p>Title to lost goods found on land, see "Finding Lost Goods," § 10.</p> |
|--|--|

#### § 1. Nature and requisites of conversion into realty in general.

*Cross-Reference.*

See post, § 4.

*Annotation.*

Heating apparatus as part of realty.—1 B. R. C. 972, note.

#### § 2. Articles capable of annexation to realty.

*Cross-Reference.*

Railroad tracks and rolling stock, see post, § 26.

*Annotation.*

Are things placed on land with the inten-

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

tion of annexing them fixtures, where they are never actually attached.—69 L. R. A. 892, note.

### § 3. Persons who may make annexation.

### § 4. Intent in making annexation.

#### *Cross-Reference.*

Evidence and questions for jury, see post, § 35.

#### *Annotation.*

Machinery placed on land with intention of annexing it, as a fixture when never actually attached.—69 L. R. A. 894, note.

### § 5. Purpose or use for which annexation is made.

#### *Annotation.*

Storm doors and windows and screens as fixtures.—30 L. R. A. (N. S.) 1189, note.

### §§ 6-8. Mode and sufficiency of annexation.

#### *Annotation.*

Engine as fixture when placed upon the land by the owner of the realty.—8 L. R. A. (N. S.) 376, note.

(a) Wooden buildings, resting by their own weight on flat stones laid on the surface of the ground, are not fixtures.—*Carlin v. Ritter*, 68 Md. 478, 13 Atl. 370. [Cited and annotated in 48 L. R. A. (N. S.) 295, 297, on renewing tenancy without reserving right to remove fixtures; in 1 L. R. A. (N. S.) 1196, 1200, on effect of renewing tenancy without reserving right to remove fixtures.]

(b) Machinery in a mill, such as looms, cards, spinning frames, speeder, etc., and only fastened to the building so as to secure their steady and uniform operation, are not fixtures.—*McKim v. Mason*, 3 Md. Ch. 186. [Cited and annotated in 8 L. R. A. (N. S.) 379, on engine installed by owner of realty as fixture.]

### §§ 9-12. (See Analysis.)

### § 13. Between landlord and tenant and their privies.

#### *Cross-References.*

Effect of agreements, see post, § 27.

Evidence, see post, § 35.

Railroad tracks, see post, § 26.

Removal, see post, §§ 31-34.

Validity of parol agreement authorizing tenant to remove doors and partitions, see "Frauds, Statute of," § 56.

### § 14.—In general.

(a) The general rule of law that, between vendor and vendee, fixtures pass with the realty, has been considerably relaxed in

favor of tenants; and fixtures, intended by a tenant for the purpose and enjoyment of his tenancy during the term, are his personal property, removable before the end of the term.—*Coombs v. Jordan*, 3 Bland 284, 22 Am. Dec. 236. [Cited and annotated in 57 L. R. A. 644, on nature of interest in land contract as real or personal.]

### § 15.—Trade fixtures.

#### *Annotation.*

Show cases, shelving, etc., as fixtures as between landlord and tenant.—43 L. R. A. (N. S.) 677, note.

Window fronts as fixtures.—41 L. R. A. (N. S.) 1022, note.

Cold-storage plant as fixture.—30 L. R. A. (N. S.) 576, note.

(a) A scenic railway, consisting of a pavilion with a series of undulating elevated tracks starting from and returning to it, with the machinery, apparatus, etc., to make flying trips for the amusement of its patrons at a pleasure resort, is a trade fixture, and as such may be removed by a tenant during his term.—*L. A. Thompson Scenic Ry. Co. v. Young*, 90 Md. 278, 44 Atl. 1024.

### § 16.—Agricultural fixtures.

(a) A tenant under a farming lease or contract has no right to remove from the premises so occupied, without an express stipulation to that effect, any manure made in whole or in part from the produce of the land.—*Gallagher v. Shipley*, 24 Md. 418, 87 Am. Dec. 611. [Cited and annotated in 31 L. R. A. 700, on rights of landlord and tenant to manure.]

(b) The rule that a tenant under a farming lease has no right to remove manure, made in whole or in part from the produce of the land, from the premises occupied by him, does not apply to a lease which is silent as to the purposes for which the demised premises are to be used.—*Gallagher v. Shipley*, 24 Md. 418, 87 Am. Dec. 611. [Cited and annotated, see supra.]

### § 17.—Domestic or ornamental fixtures.

#### *Cross-Reference.*

Questions for jury, see post, § 35.

### §§ 18-20. Between mortgagor and mortgagee of land and their privies.

#### *Cross-References.*

Evidence, see post, § 35.

Questions for jury, see post, § 35.

Removal, see post, §§ 31-34.

Construction of mortgage in general, see "Mortgages," §§ 128, 133.

Removal as impairing security, see "Mortgages," §§ 205-207.

#### Annotation.

What articles are included in term fixtures as employed in chattel mortgage.—46 L. R. A. (N. S.) 206, note.

Show cases, shelving, etc., as fixtures as between mortgagor and mortgagee.—43 L. R. A. (N. S.) 676, note.

Rights of seller of chattel, retaining title thereto or a lien thereon, as against existing mortgagees of the realty to which it is affixed by the owner.—37 L. R. A. (N. S.) 119; 1 B. R. C. 664, notes.

Effect of agreement to prevent fixtures from becoming a part of realty as against prior mortgagees.—19 L. R. A. 444, note.

Heating apparatus as part of realty, as between mortgagor and mortgagee and their privies.—1 B. R. C. 974, note.

(a) The machinery in a fruit-canning factory, consisting of a boiler weighing 10,000 pounds on a brick foundation in a boiler house attached to the main building with mortices and spikes; the steam pipes and pumps fixed on hard-wood foundations, connecting the boiler with kettles, scalders, etc., resting upon hard-wood foundations, under the floor of the main building; and the gasoline tanks upon a stand of brick in a house 30 feet from the main building,—none of which could be removed without serious injury to the buildings,—are fixtures, and will pass to the mortgagee under a mortgage of the land, "together with the buildings and improvements thereupon, and the rights, roadways, waters, privileges, appurtenances, and advantages thereto belonging, or in any wise appertaining."—*Dudley v. Hurst*, 67 Md. 44, 8 Atl. 901, 1 Am. St. Rep. 368.

(b) A partner annexed apparatus for distilling, including a mash tub and three fermenting tanks, to real estate owned by the other partner, under the agreement that it should remain the former's individual property. A mortgage of the realty was afterwards given, and a sale made thereunder. Both the mortgagee and the purchaser at the mortgage sale knew the facts. The purchaser purchased the property with the intention of carrying on the distilling business. *Held*, that he acquired no title to the fixtures.—*Walker v. Schindel*, 58 Md. 360.

(c) As between mortgagor and mortgagee,

anything pertaining to the real estate, necessary for its enjoyment and permanently attached to the freehold, is a fixture for the benefit of the mortgagee.—*McKim v. Mason*, 3 Md. Ch. 186. [Cited and annotated in 8 L. R. A. (N. S.) 379, on engine installed by owner of realty as fixture.]

(d) A steam engine and boilers affixed to a building for manufacturing purposes, and supplying the motive power, are fixtures, and as between the mortgagor and mortgagee belong to the latter, though placed in the building after the execution of the mortgage.—*McKim v. Mason*, 3 Md. Ch. 186. [Cited and annotated, see *supra*.]

(e) As between mortgagor and mortgagee, the question is whether the thing claimed to be a fixture is so attached as to become a part of the freehold; and this is a question of fact, depending upon the mode of annexation to the soil or fabric of the building, and the extent to which it is united to them.—*McKim v. Mason*, 3 Md. Ch. 186. [Cited and annotated, see *supra*.]

(f) If improvements doubtful in their nature have been so affixed as to become a part of the realty, they pass to the mortgagee.—*McKim v. Mason*, 3 Md. Ch. 186. [Cited and annotated, see *supra*.]

### § 21. Between vendor and purchaser of land and their privies.

#### Cross-References.

Effect of agreement, see post, § 27.

Removal, see post, §§ 31-34.

#### Annotation.

Effect of agreement to prevent fixtures from becoming part of realty as to purchasers.—19 L. R. A. 443, note.

Effect of chattel mortgage on fixtures as against subsequent purchaser or encumbrancer.—15 L. R. A. 61, note.

Rights of seller of fixtures, retaining title thereto or a lien thereon, as against purchasers or encumbrancers of the realty.—1 B. R. C. 664, note.

Heating apparatus as part of realty as between grantor and grantee.—1 B. R. C. 972, note.

(a) Since the rule as to fixtures is the same between the owner of the land and a purchaser at execution sale as between vendor and vendee of the land, fixtures put up for the benefit of trade, affixed to the realty, such as pumps, cisterns, iron gratings, doors, distillery, and horse mills, pass by the sheriff's deed, but not fixtures not annexed to the

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

soil, such as joists, vats, buckets, pickets, and faucets.—*Kirwan v. Latour*, 1 H. & J. 289, 2 Am. Dec. 519.

(b) As between the owner of realty and an execution purchaser, a still house and apparatus, and utensils for carrying on a distillery, are subject not to the rules as to landlord and tenant, but as to vendor and vendee, and, as fixtures, pass to the purchaser.—*Kirwan v. Latour*, 1 H. & J. 289, 2 Am. Dec. 519.

§§ 22-25. (See Analysis.)

### § 26. Railroad tracks and rolling stock.

(a) At the time a railroad was laid upon the land of the defendant, it was not intended that such road should be merged in the freehold. The road was built solely by the railroad company under the reasonable belief that it had a free right of way, under the license and by the permission of the owner of the soil. *Held*, that the rails and other materials, which formed a part of the railroad, were trade fixtures, and became personalty, liable to the same rules of law that govern other personal property.—*Northern Cent. Ry. Co. v. Canton Co.*, 30 Md. 347. [Cited and annotated in 66 L. R. A. 42, on railroad property as realty or personalty.]

### § 27. Agreements.

*Cross-References.*

See ante, § 18.

Evidence, see post, § 35.

*Annotation.*

Agreement between landlord and tenant as to removal of fixtures and improvements by latter as affecting third person claiming a mechanic's lien.—45 L. R. A. (N. S.) 100, note.

Effect of agreement to prevent fixtures from becoming part of realty as to mortgagees.—19 L. R. A. 444, note.

(a) The general rule of law that, between vendor and vendee, fixtures pass with the realty, has been considerably relaxed in favor of tenants; and fixtures, intended by a tenant for the purpose and enjoyment of his tenancy during the term, are his personal property, removable before the end of the term.—*Coombs v. Jordan*, 3 Bland 284, 22 Am. Dec. 236. [Cited and annotated in 57 L. R. A. 644, on nature of interest in land contract as real or personal.]

§§ 28, 29. (See Analysis.)

### § 30. Removal.

### § 31.— In general.

### § 32.— Time and manner of making.

(a) Where a tenant has a right to remove trade fixtures during his term, he loses that right if he fails to reserve it when he continues in possession after the expiration of his term under a new agreement.—*Carlin v. Ritter*, 68 Md. 478, 13 Atl. 370, 16 Atl. 301. (But see act 1898, c. 92, § 27, Code, art. 53, § 28.) [Cited and annotated in 48 L. R. A. (N. S.) 295, 297, on renewing tenancy without reserving right to remove fixtures; in 1 L. R. A. (N. S.) 1196, 1200, on effect of renewing tenancy without reserving right to remove fixtures.] *George Bauernschmidt Brewing Co. v. McColgan*, 89 Md. 135, 42 Atl. 907. [Cited and annotated in 1 L. R. A. (N. S.) 1197, 1200, on effect of renewing tenancy without reserving right to remove fixtures; in 48 L. R. A. (N. S.) 295, on renewing tenancy without reserving right to remove fixtures.]

(b) The strict rule which applies to tenants, requiring them to remove fixtures, which they hold as personal property, during the term, does not apply to a party in possession under a license revocable at pleasure.—*Northern Central Ry. Co. v. Canton Co.*, 30 Md. 347. [Cited and annotated in 66 L. R. A. 42, on railroad as realty or personalty.]

### § 33.— Waiver or loss of right.

(a) Where the owner of a barroom and restaurant leased the premises, and sold the fixtures to the tenant, and in the paper then executed authorized the tenant to remove any or all of said property, and agreed "not to regard them, or any of them, as fixtures," the right of the tenant to remove such articles was not lost by taking a new lease after the first expired, and failing to mention or reserve such articles in the new lease.—*O'Brien v. Mueller*, 96 Md. 134, 53 Atl. 663. [Cited and annotated in 1 L. R. A. (N. S.) 1201, on effect of renewing tenancy without reserving right to remove fixtures; in 48 L. R. A. (N. S.) 295, on renewing tenancy without reserving right to remove fixtures; in 43 L. R. A. (N. S.) 679, 680, on show cases, shelving, etc., as fixtures.]

(b) A lease provided for renewal in absence of notice to terminate. The lessee gave and received no notice, and, instead of holding over, surrendered the lease, and accepted a new one, which did not refer to the

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

first, nor reserve any interest in fixtures attached during its life, but covenanted to surrender the premises as they then were, and provided that all improvements to be put on the premises should belong to the lessor. *Held*, that, the lessee having failed to remove the fixtures during the life of the first lease, they became attached to the realty.—*George Bauernschmidt Brewing Co. v. McColgan*, 89 Md. 135, 42 Atl. 907. (But see act 1898, c. 92, § 27, Code, art. 53, § 28.) [Cited and annotated, see *supra*, § 32.]

### § 34.—Wrongful removal.

*Cross-Reference.*

See post, § 35.

### § 35. Actions relating to fixtures.

*Cross-References.*

See "Trespass," § 10.

Admission of vendor as affecting vendee, see "Evidence," § 230.

Amendment of answer in action to restrain wrongful removal, see "Injunction," § 121.

Jurisdiction of justices of the peace in action involving title to realty, see "Justices of the Peace," § 36.

Res gestæ evidence, see "Evidence," § 121. Restraining removal, see "Injunction," § 51.

*Annotation.*

Ejectment as proper remedy to recover.—18 L. R. A. 787, note.

(a) A purchaser bought land of two partners, with knowledge of a prior agreement between them by which one placed on the land apparatus for distilling, on condition that it should remain his personal property. *Held*, that the purchaser was liable for a conversion for appropriating the apparatus to his own use, though an actual severance of the property had not been made.—*Walker v. Schindel*, 58 Md. 360. [Cited and annotated in 19 L. R. A. 442, on effect of agreement to prevent fixtures becoming part of realty.]

### FLAGMEN.

*Cross-Reference.*

At railroad crossings, see "Railroads," §§ 243, 307, 308.

### FLAGS.\*

*Cross-References.*

Laws prohibiting desecration as class legislation, see "Constitutional Law," § 208.

Laws prohibiting use of, for advertising purposes as taking property without just compensation, see "Eminent Domain," § 2.

Police power to protect from desecration, see "Constitutional Law," § 81.

Power of state to prohibit use of national flag, see "States," § 4.

State flag, see "States," § 23.

### FLAT CAR.

*Cross-References.*

See "Master and Servant," § 111; "Railroads," § 229.

### FLATS.\*

*Cross-References.*

See "Navigable Waters," §§ 36-38; "Public Lands," §§ 58-61; "Waters and Water Courses," § 92.

### FLIGHT.\*

*Cross-References.*

Declarations of accused in explanation of, see "Criminal Law," § 413.

Evidence as to preparations of accused for flight, see "Homicide," § 160.

Evidence explanatory of flight of accused, see "Criminal Law," § 361.

Evidence of, as bearing on degree of homicide, see "Homicide," § 199.

Evidence of, as showing deliberation or premeditation, see "Homicide," § 156.

Evidence of flight of conspirator or co-defendant, see "Criminal Law," § 424.

Evidence of flight of third person as res gestæ, see "Criminal Law," § 368.

Instructions on presumption from flight of accused, see "Criminal Law," § 778.

Of accused, as evidence of guilt in general, see "Criminal Law," § 353.

Of accused, evidence as to, in prosecution for homicide, see "Homicide," § 174.

Of accused pending trial, see "Criminal Law," § 636.

Presumptions from flight of accused in criminal prosecution, see "Criminal Law," § 308.

Weight and sufficiency of evidence of to show guilt, see "Criminal Law," § 552.

### FLOATABLE STREAMS.\*

*Cross-Reference.*

See "Navigable Waters," § 1.

### FLOATAGE.

*Cross-References.*

Of rafts and logs on navigable waters, see "Logs and Logging," §§ 11-20; "Navigable Waters," § 17.

### FLOATING DEBT.\*

*Cross-References.*

See "Counties," §§ 149-171; "Municipal Corporations," §§ 858-905; "States," §§ 113-145; "United States," §§ 79-90.

### FLOATS.\*

*Cross-Reference.*

Unlocated grants of public land, see "Public Lands," §§ 42-93.

\*Annotation: Words and Phrases, same title.

**FLOGGING.\****Cross-References.*

Children, see "Parent and Child," § 2.  
 Pupils, see "Schools and School Districts," § 176.  
 Seamen, see "Seamen," § 30.

**FLOODING LANDS.***Cross-References.*

See "Highways," § 120; "Municipal Corporations," §§ 834, 835; "Railroads," §§ 106-108, 112-114; "Waters and Water Courses," §§ 115-126, 159-179.  
 Taking property for public use, see "Eminent Domain."

**FLOODS.\****Cross-References.*

In general, see "Waters and Water Courses," §§ 115-126, 159-179.  
 As defense to action for injury to passenger, see "Carriers," § 285.  
 As defense to loss of or injury to goods by carrier, see "Carriers," § 119.

**FLOWAGE.***Cross-References.*

See "Waters and Water Courses," §§ 159-179.  
 Exercise of right to overflow land as evidence of adverse possession, see "Adverse Possession," § 16.  
 Joinder of causes of action for obstructing flow of water and other damages, see "Action," § 45.  
 License to flood land as preventing adverse possession by licensee, see "Adverse Possession," § 60.  
 Pleading prescriptive right to flood land, see "Adverse Possession," § 110.  
 Possession by flooding lands of another, see "Adverse Possession," § 26.

Separate causes of action for overflow caused by obstruction of water course, see "Action," § 53.

**FLUMES.\****Cross-Reference.*

Mining flumes, see "Mines and Minerals," § 89.

**FLYING JENNY.***Cross-Reference.*

License taxes, see "Licenses," § 40.

**FLYING SWITCH.\****Cross-Reference.*

Injury to servant while making, see "Master and Servant," § 135.

**FOAL GETTER.\****Cross-References.*

Warranty in breeding contract, see "Animals," § 18.  
 Warranty in contract of sale of animals, see "Sales," §§ 261, 273, 279, 280, 284.

**F. O. B. .***Cross-Reference.*

See "Sales," § 79.

**FOETICIDE.***Cross-Reference.*

See "Abortion."

**FOG.***Cross-Reference.*

Collision of vessels, see "Collision," §§ 80, 100.

**FOLLOWING TRUST PROPERTY.***Cross-Reference.*

See "Trusts," §§ 349-358.

**FOOD.\****Scope-Note.*

[INCLUDES regulation of manufacture, sale, or use of articles of food and drink and of substitutes and limitations thereof; rights of property and traffic in unwholesome or adulterated articles used as food, etc.; liabilities for injuries from the sale, use, etc., thereof; and violations of laws relating to such articles, and prosecution and punishment thereof as public offenses.

[EXCLUDES medicines (see "Druggists"), intoxicants (see "Intoxicating Liquors"), and poisons (see "Poisons"); regulations regarding commodities as articles of commerce, more particularly as to commerce between the states, with foreign countries, etc. (see "Commerce"), and inspection for prevention of fraud or for commercial purposes (see "Inspection"), and adulteration as a public offense (see "Adulteration").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Power to make regulations.
- § 2. Statutory and municipal regulations in general.
- § 3. License and inspection.

\*Annotation: Words and Phrases, same title.

- § 4. Quantity and price.
- § 5. Purity and quality.
- § 6. Unwholesome or unfit for use.
- § 7. Substitutes or imitations in general.
- § 8. Oleomargarine and other imitations of dairy products.
- § 9. Imitations of lard or other fats or oils.
- § 10. Imitations of vinegar.
- § 11. Violations of regulations.
- § 12. — In general.
- § 13. — Illegal manufacture.
- § 14. — Illegal sale or use.
- § 15. — Notice to purchasers or public.
- § 16. Penalties and actions therefor.
- § 17. Criminal prosecutions.
- § 18. — In general.
- § 19. — Preliminary proceedings.
- § 20. — Indictment or information.
- § 21. — Evidence.
- § 22. — Trial and review.
- § 23. — Sentence and punishment.
- § 24. Searches and seizures.
- § 25. Liabilities for injuries.
- § 26. Rights of property and contracts.

#### *Cross-References.*

- |   |   |
|---|---|
| <p>Adulteration as a public offense, see "Adulteration."</p> <p>Causing death by starvation as homicide, see "Homicide," § 5.</p> <p>Delivery of milk on Sunday as work of necessity, see "Sunday," § 7.</p> <p>Discrimination as against non-producing vendors of milk, see "Constitutional Law," § 240.</p> <p>Duty of carrier to feed live stock, see "Carriers," § 211.</p> <p>Effect of partial invalidity of statutory regulations, see "Statutes," § 64.</p> <p>Exemption from legal process, see "Exemptions," § 43.</p> <p>Implied warranty on sale, see "Sales," § 274.</p> <p>Inspection, see "Inspection."</p> <p>Judicial notice as to food regulations, see "Criminal Law," § 304.</p> <p>Jurisdiction of court of limited or inferior jurisdiction to enjoin sale of oleomargarine without license, see "Courts," § 183.</p> <p>Laws declaring it unlawful to sell adulterated milk as impairing obligation of contract, see "Constitutional Law," § 155.</p> <p>Liability of manufacturer of food for injuries, see "Negligence," § 27.</p> <p>Liability of restaurant keeper for furnishing poisonous food to guests, see "Innkeepers," § 10.</p> <p>Libelous imputation of violation of food laws, see "Libel and Slander," § 7.</p> <p>Mandamus to compel criminal prosecution for violation of act relating to food, see "Mandamus," § 61.</p> <p>Persons entitled to raise question of consti-</p> | <p>tutionality of statutory regulations, see "Constitutional Law," § 42.</p> <p>Pleas to indictment for violation of regulations relating to articles of food or drink, see "Criminal Law," § 286.</p> <p>Prohibiting sales of uncooked meat on Sunday, see "Sunday," §§ 2, 5.</p> <p>Prohibition of intoxicating ingredients in articles of food, see "Intoxicating Liquors," § 135.</p> <p>Regulation of commerce, see "Commerce," § 60.</p> <p>Regulations as affecting rights under trademark, see "Trade-Marks and Trade-Names," § 31.</p> <p>Regulations as restraining personal liberty to sell articles of commerce, see "Constitutional Law," § 87.</p> <p>Regulations as to purity and quality of intoxicating liquors, see "Intoxicating Liquors," § 123.</p> <p>Regulations by board of health as to sale of milk, see "Health," §§ 21, 31, 36.</p> <p>Regulations of sale of milk as constituting denial of equal protection of law, see "Constitutional Law," § 240.</p> <p>Restraining sale of oleomargarine as infringement of right to trial by jury, see "Jury," § 31.</p> <p>Sale of meat on Sunday as work of necessity or charity, see "Sunday," § 7.</p> <p>Statute providing that no person shall sell cream containing less than 20 per cent. fat as deprivation of property without due process of law, see "Constitutional Law," § 296.</p> |
|---|---|

Sufficiency of title of act relating to food, see "Statutes," § 110½.  
 Use and regulation of public markets, see "Municipal Corporations," § 720.

Validity of statutes relating to sale of oleomargarine as special legislation, see "Statutes," § 86.  
 Violation of fish laws, see "Fish."

## § 1. Power to make regulations.

### Cross-Reference.

See post, §§ 2, 8.

### Annotation.

Constitutionality and construction of statutes in relation to vinegar.—49 L. R. A. (N. S.) 1206, note.

Power to regulate location or condition of bakeries.—26 L. R. A. (N. S.) 842, note.

Legislative power to fix price of bread.—33 L. R. A. 182, note.

(a) Code 1888, art. 27, §§ 88-91 (act 1888, c. 312), forbidding the sale of oleomargarine and other butter substitutes as food, whether produced in the state or elsewhere, are a proper exercise of police power and are constitutional.—*Wright v. State*, 88 Md. 436, 41 Atl. 795. (See Code 1911 [vol. 3], art. 27, §§ 135-139.)

(b) Code 1888, art. 27, §§ 88-91 (act 1888, c. 312), known as the "Oleomargarine Law," having for its object the protection of the purchaser against fraud and deception is within the exercise of the police power of the state, and valid.—*McAllister v. State*, 72 Md. 390, 20 Atl. 143. (See Code [vol. 3], art. 27, §§ 135-139.)

(c) The enactment of act 1884, c. 243 (the Oleomargarine Law), is clearly within the legislative power of the state.—*Pierce v. State*, 63 Md. 592. (See Code [vol. 3], art. 27, §§ 135-139.) [Cited and annotated in 1 L. R. A. (N. S.) 187, on validity of police regulation as to branding or labeling articles of commerce.]

## § 2. Statutory and municipal regulations in general.

### Cross-References.

Effect of partial invalidity of statutory regulation, see "Statutes," § 64.

Persons entitled to raise question of constitutionality, see "Constitutional Law," § 42.

Regulation of sale of milk denial of equal protection of law, see "Constitutional Law," § 240.

Sufficiency of title of act, see "Statutes," § 110½.

### Annotation.

Constitutionality of discriminations in statutory regulations concerning food products.—34 L. R. A. (N. S.) 650, note.

Validity of state statute regulating inspection of meat which is subject of interstate commerce.—27 L. R. A. (N. S.) 677, note.

## §§ 3-7. (See Analysis.)

## § 8. Oleomargarine and other imitations of dairy products.

### Cross-References.

Jurisdiction of court of limited or inferior jurisdiction to enjoin sale of oleomargarine without license, see "Courts," § 183.

Restraining sale as infringement of right to trial by jury, see "Jury," § 31.

Special legislation, see "Statutes," § 86.

Sufficiency of title of act, see "Statutes," § 110½.

### Annotation.

Applicability of oleomargarine statutes where resemblance to butter results from choice of ingredients, and not from the introduction of foreign coloring matter.—14 L. R. A. (N. S.) 1062; L. R. A. 1915A, 757, notes.

Constitutionality of discrimination in statutory regulations concerning oleomargarine.—34 L. R. A. (N. S.) 651, note.

Use of coloring matter in oleomargarine as adulteration.—25 L. R. A. (N. S.) 1234, note.

(a) Act 1900, p. 868, c. 532, § 138f (Code 1904, art. 27, § 235), prohibits the manufacture or sale of condensed or preserved milk unless manufactured from pure and unadulterated milk, from which no part of the cream has been taken, or unless the proportion of milk solids therein shall be equivalent to a certain percentage of milk solids in crude milk. Section 233 provides that milk from which a part of the cream has been taken shall be deemed adulterated and unwholesome, but forbids a construction of the sections so as to prohibit the sale of pure skimmed milk when labeled and sold as such, or the addition of sugar to the manufacture of condensed milk, and §§ 232 and 234 prescribe the standard for pure milk and the penalty for violating the statute. *Held*, that the primary purpose of § 235 was not to prevent fraud, but to prohibit the sale of articles deemed unhealthful by the Legislature, and the sale of "condensed skimmed milk," was prohibited by the statute, and



the fact that such an article was unknown or not manufactured when the statute was enacted was immaterial.—*Reiter v. State*, 109 Md. 235, 71 Atl. 975. (See Code 1911 [vol. 3], art. 27, §§ 247-249.)

§§ 9-16. (See Analysis.)

## §§ 17-23. Criminal prosecutions.

### Cross-References.

Jurisdiction of federal court to enjoin prosecution because of constitutional questions being involved, see "Courts," § 282.

Malicious prosecution, see "Malicious Prosecution," § 19.

Mandamus to compel, see "Mandamus," § 61.

Summary proceedings, see "Criminal Law," § 252.

### Evidence.

Judicial notice, see "Criminal Law," § 304.  
Opinion evidence, see "Criminal Law," §§ 448, 471, 481, 483.

### Indictment or information.

Aider by verdict, see "Indictment and Information," § 202.

Duplicity, see "Indictment and Information," § 125.

Following language of statute, see "Indictment and Information," § 110.

Negating exceptions of statute, see "Indictment and Information," § 111.

Proper form of accusation, see "Indictment and Information," § 4.

### Trial.

Harmless error, see "Criminal Law," § 1169.

Right to jury trial, see "Jury," §§ 22, 31.

(a) Under Code 1888, art. 27, § 90, providing that any person who sells oleomargarine to a person who asks for butter shall be guilty of a fraud, an indictment charging such offense need not allege that the oleomargarine was fraudulently sold.—*Fox v. State*, 94 Md. 143, 50 Atl. 700, 89 Am. St. Rep. 419. (See Code 1911 [vol. 3], art. 27, § 137.)

(b) Under Code 1888, art. 27, § 89 ("Oleomargarine Law"), proof that defendant kept and offered for sale impure and deleterious oleomargarine, made in part out of acids and other deleterious substances, is not sufficiently met by evidence that it was manufactured in another state, out of animal fats and vegetables and oils, and that it was not sold as butter, but as oleomargarine, defendant having the burden of showing that the article was unadulterated and free from acids and other deleterious substances, as

the state has an undoubted right, under its police power, to prohibit the importation and sale of impure articles of food.—*Fox v. State*, 89 Md. 381, 43 Atl. 775, 73 Am. St. Rep. 193. (See Code 1911 [vol. 3], art. 27, § 137.)

(c) Under an indictment charging sale of a prohibited article, evidence is admissible to show that the article defendant was charged with selling was not embraced within the terms of the statute defining the offense.—*Fox v. State*, 89 Md. 381, 43 Atl. 775, 73 Am. St. Rep. 193.

(d) Under Code 1888, art. 27, § 90, providing that no person shall coat, powder, or color butterine or oleomargarine, or any compound of the same, a count charging the sale of two pounds of oleomargarine colored with annatto, whereby it was made to resemble butter, is good, and a demurrer to the whole indictment is properly overruled, though other counts may be insufficient.—*Rasch v. State*, 89 Md. 755, 43 Atl. 931. (See Code 1911 [vol. 3], art. 27, § 137.)

(e) Under Code 1888, art. 27, § 89, prohibiting the sale of any article manufactured from animal fat or animal or vegetable oils in imitation of natural butter, and not produced from pure milk or cream, a count charging a sale of two pounds of oleomargarine is good.—*Rasch v. State*, 89 Md. 755, 43 Atl. 931. (See Code 1911 [vol. 3], art. 27, § 137.)

(f) Act 1884, c. 243, § 1, provides that every person who shall manufacture for sale, or offer for sale, oleomargarine, shall cause every parcel to be stamped, and every retailer shall cause every package sold by him to be stamped; § 2, that every person who shall sell or offer to sell, or have in his possession with intent to sell, oleomargarine without being stamped, and that every retailer who sells a package without delivering it labeled, as required by § 1, shall pay a certain fine; § 3, that every person who shall sell or offer or expose for sale oleomargarine without having it stamped or labeled shall be guilty of a misdemeanor. *Held*, that an indictment for having in one's possession oleomargarine with intent to sell the same without delivering to the purchaser a printed label bearing the word "oleomargarine" de-

scribed no offense.—*Pierce v. State*, 63 Md. 592. (See Code [vol. 3], art. 27, §§ 135-139.) [Cited and annotated in 1 L. R. A. (N. S.) 187, on validity of police regulation as to branding or labeling articles of commerce.]

#### § 24. Searches and seizures.

#### § 25. Liabilities for injuries.

##### *Cross-Reference.*

Liability of manufacturer, see "Negligence," § 27.

##### *Annotation.*

Liability of manufacturer or seller of food products to persons not in privity of contract for injuries from defects in articles sold.—48 L. R. A. (N. S.) 219, note.

Liability for serving unfit food.—40 L. R. A. (N. S.) 480, note.

Liability of packer or vendor to person not in privity for injury from defects in articles of food.—19 L. R. A. (N. S.) 923, note.

Liability of vendor in cases of tort for sale of unwholesome food or drug.—21 L. R. A. 139, note.

#### § 26. Rights of property and contracts.

### FOOD AND DRUGS ACT.\*

##### *Cross-References.*

See "Druggists," § 2.

Adulteration or misbranding of intoxicating liquors, see "Intoxicating Liquors," § 123.

Forfeiture of adulterated or misbranded liquors, see "Intoxicating Liquors," § 250.

Regulation of commerce, see "Commerce," § 83.

### FOOTBALL.

##### *Cross-Reference.*

Power of school directors to prohibit playing, see "Schools and School Districts," § 171.

### FOOTPATH.

##### *Cross-References.*

Injuries from defects or obstructions in sidewalk, see "Municipal Corporations," §§ 755-826.

Use of sidewalk as highway, see "Municipal Corporations," § 704.

Use of sidewalk by abutting owners, see "Municipal Corporations," § 670.

### FOOTPRINTS.

##### *Cross-References.*

Comparison of accused's shoes with footprints at scene of offense, see "Criminal Law," § 393.

Demonstrative evidence of, see "Criminal Law," § 404.

Opinion evidence as to, see "Criminal Law," §§ 452, 459, 465.

### FORBEARANCE.\*

##### *Cross-References.*

Agreement to forbear as ground for plea in abatement, see "Abatement and Revival," § 20.

As consideration for bills and notes, see "Bills and Notes," § 92.

As consideration for contract in general, see "Contracts," §§ 71-73.

As consideration for contracts of suretyship, see "Principal and Surety," § 35.

As consideration for guaranty, see "Guaranty," § 16.

Extension of time of payment of note to maker as discharge of indorser, see "Bills and Notes," §§ 140, 256.

Extension of time of payment or other performance as discharge of surety, see "Principal and Surety," §§ 103-108.

Pleading extension of time and agreements not to sue on bill or note, see "Bills and Notes," § 483.

Transfer of note as security for debt in consideration of extension of time of payment of debt, see "Bills and Notes," § 358.

### FORCE.\*

##### *Cross-References.*

Avoidance of agreement of accord and satisfaction obtained by force, see "Accord and Satisfaction," § 20.

Compelling renunciation of right to land, see "Abandonment," § 4.

Element of crime, see "Abduction," § 1; "Assault and Battery"; "Incest," §§ 1, 4, 7; "Rape," §§ 6, 24; "Rescue," § 1; "Robbery," § 6.

Element of forcible entry, see "Forcible Entry and Detainer," § 4.

Element of trespass, see "Trespass," § 3.

Excessive force in doing lawful act, see "Assault and Battery," § 7.

Extortion by force, see "Threats," § 1.

Use of force in levying attachment, see "Attachment," § 161.

### FORCED HEIRS.\*

##### *Cross-Reference.*

See "Descent and Distribution," § 23.

### FORCED MARRIAGE.

##### *Cross-Reference.*

See "Abduction."

### FORCED SALE.\*

##### *Cross-References.*

See "Execution"; "Judicial Sales."

### FORCIBLE DEFILEMENT.\*

##### *Cross-References.*

See "Abduction"; "Rape."

\*Annotation: Words and Phrases, same title.

## FORCIBLE ENTRY AND DETAINER.\*

*Scope-Note.*

[INCLUDES violently taking or retaining possession of property, with threats, force, or arms, against the will of another entitled to its possession, and without authority of law; nature and extent of liability therefor in general; remedies for recovery of possession; and criminal responsibility for such forcible entry or forcible detainer, and prosecution and punishment thereof as a public offense.

[EXCLUDES mere trespasses (see "*Trespass*") ; and summary remedies for recovery of possession of lands demised (see "*Landlord and Tenant*"), mortgaged (see "*Mortgages*"), or sold (see "*Vendor and Purchaser*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Civil Liability.**

- § 1. Disseisin and remedies therefor in general.
- § 2. Statutory provisions.
- § 3. Right of entry to take possession without action.
- § 4. Nature and elements of forcible entry.
- § 5. Nature and elements of forcible or other unlawful detainer.
- § 6. Nature and form of remedy.
- § 7. Grounds of action in general.
- § 8. Title to support action.
- § 9. Prior possession of plaintiff.
- § 10. Right of plaintiff to possession.
- § 11. Notice to quit and demand of possession.
- § 12. Defenses.
- § 13. Pendency of other action or proceeding.
- § 14. Persons entitled to sue.
- § 15. Persons against whom action may be brought.
- § 16. Jurisdiction.
- § 17. Time to sue and limitations.
- § 18. Parties.
- § 19. Process and appearance.
- § 20. Proceedings for taking and delivery of possession.
- § 21. Inquisition or other summary proceeding, and review thereof.
- § 22. Pleading.
- § 24. — Complaint or petition.
- § 25. — Plea or answer.
- § 26. — Demurrer.
- § 27. — Amendment.
- § 28. — Issues, proof, and variance.
- § 29. Evidence.
- § 30. Damages.
- § 31. Trial.
- § 32. — Scope of inquiry and powers of court.
- § 33. — Mode and conduct in general.
- § 34. — Questions for jury.

---

\*Annotation: Words and Phrases, same title.

**I. Civil Liability—Continued.**

- § 35. — Instructions.
- § 36. — Verdict and findings.
- § 37. New trial.
- § 38. Judgment.
- § 39. Execution and enforcement of judgment.
- § 40. — In general.
- § 41. — Restitution.
- § 42. Review.
- § 43. — Appeal and trial de novo.
- § 44. — Certiorari.
- § 45. — Supersedeas and stay of proceedings.
- § 46. — Restitution or re-restitution on reversal.
- § 47. Costs.
- § 48. Wrongful dispossession.

**II. Criminal Responsibility.**

- § 49. Disseisin as a public offense in general.
- § 50. Statutory provisions.
- § 51. Nature and elements of forcible entry.
- § 52. Nature and elements of forcible or other unlawful detainer.
- § 53. Defenses.
- § 54. Persons liable.
- § 55. Persons who may prosecute.
- § 56. Inquisition or other summary proceeding.
- § 57. Prosecution by indictment or information.
- § 58. Sentence and punishment.
- § 59. Restitution in criminal prosecutions.

**Cross-References.**

Actions for unlawful detainer of demised premises, see "Landlord and Tenant," §§ 54, 287-292.  
 Recovery of homestead in public lands, see "Public Lands," § 85.  
 Recovery of mining property, see "Mines and Minerals," §§ 81, 83.  
 Recovery of possession by vendor on breach of contract of sale, see "Vendor and Purchaser," § 299.  
 Recovery of possession of right of way of toll road, see "Turnpikes and Toll Roads," § 26½.  
 Remedy for execution purchaser, see "Execution," § 280.  
 Restraining proceedings, see "Injunction," § 26.  
 Right of county to sue, see "Counties," § 210.  
 Right of executor or administrator to sue, see "Executors and Administrators," § 180.

Right of sheriff to sue to recover possession of court house, see "Courts," § 72.  
 Right to maintain unlawful detainer for possession of public lands pending contest in interior department, see "Public Lands," § 103.  
 Right to prove written notice to quit by parol, see "Evidence," § 185.  
 Summary proceedings for recovery of demised premises, see "Landlord and Tenant," §§ 294-318.  
 Taking and delivery of property as deprivation of property without due process of law, see "Constitutional Law," § 312.  
 To obtain possession of mortgaged property, see "Mortgages," §§ 213, 323, 372, 544.  
 To recover possession of land on breach of contract of sale, see "Vendor and Purchaser," § 299.  
 Transfer of cause to other justice, see "Justices of the Peace," § 74.

**I. CIVIL LIABILITY.****Cross-References.**

Dismissal for insufficiency of affidavit, see "Dismissal and Nonsuit," § 53.  
 Nature of statutory action for treble dam-

ages by person obtaining restitution in forcible entry, see "Trespass," § 15.

- § 1. Disseisin and remedies therefor in general.

*Cross-Reference.*

Necessity of existence of relation of landlord and tenant, see "Landlord and Tenant," § 290.

## §§ 2-4. (See Analysis.)

## § 5. Nature and elements of forcible or other unlawful detainer.

*Annotation.*

Mere display of invalid process without actual force or threats, as ground of action of forcible entry and detainer.—37 L. R. A. (N. S.) 60, note.

## § 6. Nature and form of remedy.

*Cross-Reference.*

Jurisdiction of justice of the peace in actions involving title to realty, see "Justices of the Peace," § 36.

## §§ 7, 8. (See Analysis.)

## § 9. Prior possession of plaintiff.

*Cross-References.*

By homestead entryman, see "Public Lands," § 35.

By landlord of leased premises, see "Landlord and Tenant," § 54.

By lessee under oil lease, see "Mines and Minerals," § 81.

By licensee of mining rights, see "Mines and Minerals," § 83.

## § 10. Right of plaintiff to possession.

*Annotation.*

Right of one who was in peaceable possession to maintain forcible entry and detainer against another entitled to possession who forcibly dispossessed him.—8 L. R. A. (N. S.) 426; 32 L. R. A. (N. S.) 51, notes.

Civil liability for assault in regaining possession of land by one entitled to possession.—17 L. R. A. (N. S.) 455, note.

Landlord's liability to tenant for forcible expulsion after termination of tenancy.—16 L. R. A. (N. S.) 798, note.

## § 11. Notice to quit and demand of possession.

*Cross-References.*

In action against city, see "Municipal Corporations," § 1021.

Notice as part of record on appeal, see "Appeal and Error," § 517.

Right to prove written notice by parol without notice to produce, see "Evidence," § 185.

*Annotation.*

Denial of tenancy as waiver of notice to quit, or of demand of possession.—25 L. R. A. (N. S.) 104, note.

## § 12. Defenses.

*Cross-Reference.*

Counterclaims, see "Set-Off and Counterclaim," § 15.

*Annotation.*

Availability of defense of equitable estoppel in action of forcible entry and detainer.—49 L. R. A. (N. S.) 778, note.

## §§ 13-15. (See Analysis.)

## § 16. Jurisdiction.

*Cross-References.*

As dependent on amount or value in controversy, allegations in pleadings, see "Courts," § 122.

Justices of the peace depending on amount or value in controversy, see "Justices of the Peace," §§ 42-44.

Justices of the peace in actions involving title to realty, see "Justices of the Peace," § 36.

Of municipal court, see "Courts," § 188.

Right to jury trial in suit to foreclose lien for building partition fence, see "Jury," § 31.

Transfer of cause from one state court to another, see "Courts," §§ 486, 488.

## § 17. Time to sue and limitations.

*Cross-References.*

Accrual of right of action, see "Limitation of Actions," § 44.

Commencement of action as tolling limitations, see "Limitation of Actions," § 119.

Effect of bar by limitation, see "Limitation of Actions," § 174.

## § 18. Parties.

## § 19. Process and appearance.

*Cross-References.*

Appearance in justice's court as conferring jurisdiction, see "Justices of the Peace," § 84.

Appearance in justice's court as waiver of defects, see "Justices of the Peace," § 84.

## § 20. Proceedings for taking and delivery of possession.

*Cross-Reference.*

Deprivation without due process of law, see "Constitutional Law," § 312.

## § 21. Inquisition or other summary proceeding, and review thereof.

(a) Under act 1886, c. 470 (Code 1888, art. 53, §§ 4-6), providing for dispossession of a tenant by a proceeding before a magistrate without the aid of a jury, and making such proceeding applicable, as far as possible, to cases of forcible entry and detainer, a justice of the peace may, after summons and due proof, enter a judgment for restitution without the inquisition of a jury first found, and may issue his warrant to the sheriff, commanding him to dispossess the person who forcibly detains the property of another.

—*Clark v. Vannort*, 78 Md. 216, 27 Atl. 982. (See Code 1911, art. 53, §§ 4-6.)

(b) No appeal lies from the finding on inquisition against defendant in forcible entry and detainer, and an award of restitution with costs.—*Isaac v. Clarke*, 9 G. & J. 107.

(c) Where an inquisition of forcible entry and detainer was quashed as to the detainer, and affirmed as to the forcible entry, restitution may be awarded.—*Lord Proprietary v. Brown*, 1 H. & McH. 428.

## §§ 22-28. Pleading.

### Cross-References.

Changing form of action, see "Pleading," § 249.

Election between causes of action, see "Pleading," § 369.

Sufficiency of justices jurat in general, see "Justices of the Peace," § 97.

## § 29. Evidence.

### Annotation.

Right to prove fraud in title in proceedings of summary nature to recover possession of property demised.—11 L. R. A. (N. S.) 260, note.

## § 30. Damages.

### Cross-Reference.

Counterclaim in general in action for forcible entry, see "Set-Off and Counterclaim," § 15.

## §§ 31-36. Trial.

### Cross-References.

Amendment or correction of verdict, see "Trial," § 339.

On removal of cause from justice, see "Justices of the Peace," § 75.

Time of trial in justices' courts, see "Justices of the Peace," § 71.

## § 37. New trial.

## § 38. Judgment.

### Cross-References.

Affording right of action for trespass, see "Trespass," § 20.

Conclusiveness of judgment in general, see "Judgment," § 747.

Construction and operation of judgments in justices' courts, see "Justices of the Peace," § 130.

Excuses for default, see "Judgment," § 143.

Liability of justice for enforcement of void judgment, see "Justices of the Peace," §§ 27, 28.

Proof of cause of action to support default judgment, see "Judgment," § 126.

## §§ 39-41. Execution and enforcement of judgment.

### Cross-Reference.

Liability for execution of writ issued by justices of the peace, see "Justices of the Peace," §§ 27, 28.

## § 42. Review.

### Cross-References.

Jurisdiction of United States Supreme Court of writ of error to Court of Appeals of District of Columbia as affected by amount in controversy, see "Courts," § 388.

Mandamus to compel commissioner to make return of appeal, see "Mandamus," § 57.

Review by writ of error coram nobis, see "Judgment," § 334.

Subject and title of act relating to review of justice's judgments, see "Statutes," § 117.

## § 43.—Appeal and trial de novo.

### Cross-References.

Amendment of pleading on appeal from justice's court, see "Justices of the Peace," § 174.

Amendment of process on appeal from justice's court, see "Justices of the Peace," § 174.

Appellate jurisdiction as dependent on amount in controversy, see "Courts," §§ 213, 219, 222.

Appellate jurisdiction as dependent on whether case involves title to land, see "Courts," § 222.

Appellate jurisdiction dependent on justice's jurisdiction of action involving title to real property, see "Justices of the Peace," § 141.

Courts invested with appellate jurisdiction, see "Courts," § 213.

Defects in bond which may be amended, see "Justices of the Peace," § 159.

Pleadings in appellate court, see "Justices of the Peace," § 174.

Validity of appeal bond in justice's court given under unconstitutional statute, see "Justices of the Peace," § 191.

When appellate court acquires jurisdiction on appeal from justice's court, see "Justices of the Peace," § 162.

(a) The appropriate remedy of parties aggrieved by the judgment of a justice of the peace upon a proper complaint for forcible entry and detainer, is by appeal to the Circuit Court.—*Roth v. State*, 89 Md. 524, 43 Atl. 769.

(b) An appeal does not lie in cases of forcible entry and detainer.—*Isaac v. Clarke*, 9 G. & J. 107.

(c) Act 1713, c. 4, relating to writs of error and appeals, applies to civil cases only; and, as proceedings in cases of for-

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

cible entry and detainer form a part of the criminal jurisprudence, the right of appeal in such cases is not provided for by that act. —*Isaac v. Clarke*, 9 G. & J. 107. (See Code, art. 5, §§ 1, 2.)

§§ 44-46.— (See Analysis.)

§ 47. **Costs.**

*Cross-Reference.*

Liability of city, see "Municipal Corporations," § 1040.

§ 48. **Wrongful dispossession.**

**II. CRIMINAL RESPONSIBILITY.**

*Cross-References.*

Evidence of acts and declarations of conspirators and codefendants, see "Criminal Law," § 423.

Former jeopardy, see "Criminal Law," § 200.

Operation and effect of statute prescribing punishment, see "Criminal Law," § 1208.

§ 49-55. (See Analysis.)

§ 56. **Inquisition or other summary proceeding.**

(a) A justice of the peace has jurisdiction to determine actions for forcible entry and detainer, without the aid of a jury, upon his personal view of the premises, under Code 1888, art. 53, §§ 4-6, providing for the dispossession of a tenant by a magistrate without the aid of a jury, with the right to appeal to the Circuit Court, where a jury may be had, and that the proceedings relating to a tenant holding over "shall apply, as far as may be, to cases of forcible entry and detainer."—*Roth v. State*, 89 Md. 524, 43 Atl. 769. (See Code 1911, art. 53, §§ 4-6.)

§§ 57-59. (See Analysis.)

**FORD.**

*Cross-Reference.*

Maintenance of instead of bridge as constituting nuisance, see "Nuisance," § 372.

**FORCIBLE TRESPASS.\***

*Cross-Reference.*

See "Trespass," § 82.

**FORECLOSURE.\***

*Cross-References.*

Abatement by transfer of premises pending suit, see "Abatement and Revival," § 41.

Action against husband and wife, necessity of revival on death of husband, see "Abatement and Revival," § 71.

Action by contractor to foreclose mechanic's lien, effect of pending action against contractor for breach of contract, see "Abatement and Revival," § 8.

Action of foreclosure, joinder of other action, see "Action," §§ 45, 48.

Action to enforce mortgage note, joinder of cause against another defendant to cancel tax deed of mortgaged property, see "Action," § 50.

Action to foreclose landlord's lien joinder or causes against others for conversion of property subject to lien, see "Action," § 50.

Action to foreclose mortgage as involving title to land, see "Appeal and Error," § 38.

Admissibility in evidence of altered mortgage, see "Alteration of Instruments," § 24.

Adverse possession as against mortgagor, see "Adverse Possession," § 106.

Adverse possession as against purchaser at foreclosure sale, see "Adverse Possession," §§ 45, 48, 60.

Adverse possession as against right of mortgagor to enforce mortgage, see "Adverse Possession," § 42.

Adverse possession under decree foreclosing mechanic's lien, see "Adverse Possession," § 42.

Adverse possession under voidable foreclosure sale, see "Adverse Possession," § 106.

Against nonresidents, see "Absentees," § 7.

Agreement to accept smaller sum in satisfaction of judgment of foreclosure, see "Accord and Satisfaction," § 16.

Allegations of complaint as to alteration in note or mortgage, see "Alteration of Instruments," § 25.

Allowance of attorney's fee as affecting amount in controversy, see "Appeal and Error," § 59.

Amount involved as affecting appellate jurisdiction, see "Appeal and Error," § 52.

Amount involved in cross-petition to enforce mortgage lien, see "Appeal and Error," § 50.

Appealability of action to foreclose mortgage, see "Appeal and Error," § 41.

Appealability of interlocutory judgments in suits to foreclose, see "Appeal and Error," § 81.

Appealability of order appointing receiver in foreclosure suit, see "Appeal and Error," §§ 71, 91.

Appealability of order denying motion to vacate an injunction against foreclosure, see "Appeal and Error," § 41.

Appealability of order in proceedings to enjoin foreclosure of mortgage, see "Appeal and Error," § 91.

Appealability of order relating to rehearing on exceptions to ratification of mortgage sale, see "Appeal and Error," § 82.

Appealability of order setting aside foreclosure sale after confirmation, see "Appeal and Error," § 72.

\*Annotation: Words and Phrases, same title.

Appealability of orders of special term settling account of foreclosure receiver, see "Appeal and Error," § 84.

Appealability of order sustaining demurrer on ground that mortgagor is not made a party, see "Appeal and Error," § 78.

Appeals between co-parties in bill to foreclose mortgage, see "Appeal and Error," § 146.

Appearance to consent to application of surplus after sale as waiver of objection to proceedings, see "Appearance," § 26.

Appointment of trustee in bankruptcy as abating pending suit against bankrupt for foreclosure of chattel mortgage, see "Abatement and Revival," § 43.

Assignment of claim for mechanic's lien pending action to foreclose as ground of abatement, see "Abatement and Revival," § 41.

Assignment of note pending foreclosure of mortgage securing same, see "Abatement and Revival," § 41.

Authenticity of duly acknowledged mortgage, see "Acknowledgment," § 52.

Authority to take affidavit of auctioneer who officiates at foreclosure sale, see "Affidavits," § 5.

Bill to set aside release and to foreclose mortgage as stating single cause of action, see "Action," § 38.

Burden of proof in suit to foreclose altered chattel mortgage, see "Alteration of Instruments," § 27.

Change of character of action to determine adverse claim into foreclosure proceeding, see "Action," § 36.

Color of title of purchaser at foreclosure sale, see "Adverse Possession," § 76.

Compensation for keeping animals on failure of action to foreclose chattel mortgage, see "Animals," § 25.

Complaint to foreclose mechanics' lien and to recover against purchaser who assumed the debt, as stating separate causes of action, see "Action," § 38.

Concurrent actions for debt and to foreclose, see "Abatement and Revival," § 5.

Confirmation of sale after death of defendant, see "Abatement and Revival," § 71.

Consolidation of action to foreclose with suit to remove cloud from title, see "Action," § 57.

Consolidation of proceedings by claimant against estate with action to foreclose mortgage on property of deceased, see "Action," § 57.

Cross-action by second mortgagee asking judgment against persons not connected with first mortgage, see "Action," § 50.

Death of defendant after interlocutory order for sale, see "Abatement and Revival," § 67.

Defective action to foreclose as bar to subsequent suit to recover possession, see "Abatement and Revival," § 14.

Determination of action by entry of judgment, see "Action," § 71.

Effect of consolidation of action to foreclose mechanic's lien and suit to restrain sale on foreclosure, see "Action," § 59.

Effect of consolidation of creditor's bill with foreclosure suit, see "Action," § 59.

Effect of payment of installments due pending suit of foreclosure, see "Action," § 65.

Erroneous money judgment as ground for appeal, see "Appeal and Error," § 9.

Evidence to aid acknowledgment of mortgage, see "Acknowledgment," § 61.

Evidence to impeach or contradict certificate of acknowledgment of mortgage, see "Acknowledgment," § 62.

Finality of decree for purpose of appeal, see "Appeal and Error," §§ 69, 80.

Identity of relief sought in separate suits, see "Abatement and Revival," § 8.

Joinder of action for foreclosure with action ex delicto, see "Action," § 46.

Joinder of actions for foreclosure of different mortgages, see "Action," § 45.

Joinder of action to foreclose mortgage on vessel, with one to enforce liens for wages of seamen, see "Admiralty," § 30.

Joinder of causes in personal and representative capacity, see "Action," § 50.

Joinder of causes of action for foreclosure and other relief, see "Action," § 46.

Joinder of causes to foreclose mortgage and enforce personal liability of mortgagor, see "Action," § 48.

Joinder of other causes with action to foreclose, see "Action," § 48.

Mode of review of suit for foreclosure, see "Appeal and Error," § 5.

Necessary parties in proceedings for review, see "Appeal and Error," § 327.

Of agister's liens, see "Animals," § 26.

Of agricultural lien, see "Agriculture," §§ 12, 15.

Of factor's lien, see "Factors," § 57.

Of judgment liens, see "Judgment," § 801.

Of laborer's lien, see "Master and Servant," § 82.

Of lien for annuity, see "Annuities," § 6.

Of lien for towage, see "Admiralty," § 2.

Of lien of assessment for public improvement, see "Municipal Corporations," §§ 525-588.

Of lien of corporation on stock or dividends, see "Corporations," § 169.

Of lien of purchaser at invalid tax sale, see "Taxation," § 827.

Of lien on realty for killing insects, see "Agriculture," § 9.

Of liens in general, see "Liens," §§ 18-22.

Of liens on logs, lumber, mills, or mill products, see "Logs and Logging," § 33.

Of liens or mortgages on property held in common, see "Tenancy in Common," § 47.

Of liens or mortgages on railroad property, see "Railroads," §§ 180-202.

Of liens or mortgages on street railroad property, see "Street Railroads," § 55.

Of liens or mortgages on telegraph or telephone property, see "Telegraphs and Telephones," § 18.

Of mechanics' liens, see "Mechanics' Liens," §§ 245-310.



Of mining liens, see "Mines and Minerals," § 117.

Of mortgage of ward's property, see "Guardian and Ward," § 112.

Of mortgage on contract, equitable action against debtor, see "Assignments," § 127.

Of mortgages in general, see "Chattel Mortgages," §§ 249-292; "Mortgages," §§ 320-590.

Of mortgages and liens of building and loan associations, see "Building and Loan Associations," § 39.

Of pledge in general, see "Pledges," § 57.

Of pledge of stock, see "Corporations," § 123.

Of right of redemption from tax sale, see "Taxation," § 708.

Of tax liens, see "Municipal Corporation," § 980; "Taxation," § 634.

Of vendor's liens, see "Vendor and Purchaser," §§ 269-295, 315.

Of warehouseman's lien, see "Warehousemen," § 33.

Pending appeal in foreclosure action as bar to second action to set aside mortgage as cloud on title, see "Abatement and Revival," § 16.

Persons against whom action may be continued or revived, see "Abatement and Revival," § 73.

Pleading in abatement and in bar, see "Abatement and Revival," § 85.

Possession of mortgagors after foreclosure under agreement for reconveyance, see "Adverse Possession," § 60.

Possession of receiver appointed in foreclosure proceedings as possession of mortgagor, see "Adverse Possession," § 43.

Question for jury, person procuring alteration of instrument, see "Alteration of Instruments," § 30.

Restraining foreclosure of trust deed securing account stated, see "Account Stated," §§ 3, 11.

Review as depending on scope of issues in lower court, see "Appeal and Error," § 175.

Review of interlocutory orders in foreclosure proceedings, see "Appeal and Error," §§ 868-870.

Review of orders in foreclosure proceedings, nature of order appealed from, see "Appeal and Error," § 875.

Review of questions of personal liability on appeal from decree of foreclosure, see "Appeal and Error," § 863.

Revival by heir or by devisee, see "Abatement and Revival," § 72.

Revival of action by plaintiff's executor, see "Abatement and Revival," § 72.

Right to further appeal from judgment of intermediate court remanding case for foreclosure of mortgage, see "Appeal and Error," § 84.

Right to review decisions affecting substantial rights, see "Appeal and Error," § 91.

Right to review discretionary order setting aside sale in foreclosure, see "Appeal and Error," § 87.

Right to review of decision in suit to foreclose mechanic's lien, see "Appeal and Error," § 41.

Right to review order denying petition of bondholder for leave to intervene in foreclosure suit, see "Appeal and Error," § 87.

Sale under foreclosure, objections first raised on appeal, see "Appeal and Error," § 225.

Separate actions for debt and to foreclose, see "Abatement and Revival," §§ 10, 11.

Separate actions on note and deed of trust, see "Abatement and Revival," § 8.

Separate suits against different parties, see "Abatement and Revival," § 9.

Splitting cause of action, see "Action," § 53.

Statutes providing for appeals in foreclosure suits, see "Appeal and Error," § 2.

Stay of proceedings, see "Action," §§ 68, 69.

Sufficiency of assignment of decree of foreclosure of mortgage, see "Assignments," § 39.

Suit against several mortgagors as misjoinder of causes of action, see "Action," § 38.

Suit to foreclose, effect of pending action to quiet title under former foreclosure, see "Abatement and Revival," § 11.

Suit to restrain foreclosure because of material alteration in note or mortgage, see "Alteration of Instruments," § 25.

Survival of action, see "Abatement and Revival," § 56.

Void foreclosure deed as color of title, see "Adverse Possession," § 74.

## FOREIGN ACKNOWLEDGMENT.

### *Cross-Reference.*

See "Acknowledgment," §§ 17-19, 39, 47, 57.

## FOREIGN ADMINISTRATION.

### *Cross-References.*

See "Executors and Administrators," §§ 517-526.

Revival of action in name of foreign administrator in preference to temporary administrator, see "Abatement and Revival," § 72.

## FOREIGN ASSIGNMENTS.

### *Cross-References.*

Filing and recording, see "Assignments for Benefit of Creditors," § 164.

What law governs, see "Assignments for Benefit of Creditors," § 21.

## FOREIGN ASSOCIATIONS.

### *Cross-Reference.*

See "Associations," § 26.

## FOREIGN ATTACHMENT.\*

### *Cross-Reference.*

See "Garnishment."

\*Annotation: Words and Phrases, same title.

**FOREIGN BANKS.\****Cross-Reference.*

Control and regulation, see "Banks and Banking," § 18.

**FOREIGN BILLS.***Cross-Reference.*

Payment in, see "Payment," § 11.

**FOREIGN BILLS OF EXCHANGE.\****Cross-Reference.*

See "Bills and Notes," § 13.

**FOREIGN CARS.\****Cross-Reference.*

Injuries to servant, see "Master and Servant," § 106.

**FOREIGN CHARITIES.***Cross-Reference.*

See "Charities," § 2.

**FOREIGN COMMERCE.\****Cross-Reference.*

See "Commerce."

**FOREIGN CONTRACTS.***Cross-Reference.*

What law governs, see "Contracts," §§ 2, 101, 144, 276, 325.

**FOREIGN CORPORATIONS.\****Cross-References.*

See "Building and Loan Associations," § 46; "Corporations," §§ 631-691.

Assignment of claim by nonresident corporation having no right to sue, right of assignee, see "Assignments," § 121.

Insurance companies, see "Insurance," §§ 15-26.

License taxes, see "Licenses," § 7.

Mining companies, see "Mines and Minerals," § 108.

Surety companies, see "Principal and Surety," § 58.

**FOREIGN COUNTRIES.\****Cross-References.*

See "Aliens."

Admissibility in evidence of instrument executed therein, see "Evidence," § 353.

Notice of civil war in foreign country disclosed by official records, see "Evidence," § 48.

Opinion evidence as to laws, see "Evidence," § 571.

**FOREIGN COURTS.\****Cross-Reference.*

See "Courts," §§ 510-517.

**FOREIGN DIVORCE.***Cross-Reference.*

See "Divorce," §§ 326-332.

**FOREIGNERS.***Cross-References.*

See "Aliens"; "Citizens."

**FOREIGN EXECUTORS AND ADMINISTRATORS.\****Cross-References.*

See "Executors and Administrators," §§ 517-526.

Revival of action against foreign executor, see "Abatement and Revival," § 73.

**FOREIGN GOVERNMENTS.\****Cross-References.*

See "Ambassadors and Consuls"; "Extradition," §§ 1-20; "International Law"; "Neutrality Laws"; "Treaties"; "War."

**FOREIGN GUARDIANSHIP.\****Cross-References.*

See "Guardian and Ward," §§ 166-172; "Insane Persons," § 43.

**FOREIGN INSURANCE COMPANIES.\****Cross-Reference.*

See "Insurance," §§ 15-26.

**FOREIGN JUDGMENTS.\****Cross-References.*

In actions for divorce, see "Divorce," §§ 325-332.

In general, see "Judgment," §§ 813-832.

**FOREIGN JURY.***Cross-Reference.*

See "Jury," § 7.

**FOREIGN LANGUAGE.***Cross-References.*

Libel uttered in foreign language, see "Libel and Slander," §§ 85, 100, 101, 112.

Publication of process and notices, see "Newspapers," § 3.

Testimony in general, see "Witnesses," § 231.

Use of interpreters, see "Witnesses," § 230.

Warnings to servant, see "Master and Servant," § 157.

Will in language which testator does not understand, see "Wills," § 109.

**FOREIGN LAWS.\****Cross-References.*

Bankrupt acts, see "Bankruptcy," § 10.

Certification that acknowledgment is in accordance with law of state where taken, see "Acknowledgment," § 39.

Conclusiveness on appeal of finding as to law of foreign state, see "Appeal and Error," § 1083.

Competency of certified copies of foreign statutes, as evidence, see "Evidence," § 349.

\*Annotation: Words and Phrases, same title.

Competency of foreign statutes as evidence, see "Evidence," § 331.

Competency of witnesses to testify as experts as to laws of other states or countries, see "Evidence," § 541.

Construction of statutes adopted from other states or countries, see "Statutes," § 226.

Effect of acknowledgment under laws of foreign state or country, see "Acknowledgment," § 57.

Evidence as to foreign statutes, see "Statutes," §§ 289, 290.

Expert testimony as to laws of other states or countries, see "Evidence," § 517.

Extraterritorial effect of revenue laws requiring stamps on instruments offered in evidence, see "Internal Revenue," § 34.

Judicial construction, see "Statutes," § 176.

Judicial notice of laws of foreign countries, see "Evidence," § 37.

Judicial notice of laws of other states, see "Evidence," § 35.

Jurisdiction of actions under laws of foreign country, see "Courts," § 9.

Jurisdiction of actions under laws of other state, see "Courts," § 8.

Marriage under foreign laws, see "Marriage," § 17.

Pleading foreign statutes, see "Statutes," § 281.

Presumptions as to laws of foreign countries, see "Criminal Law," § 320; "Evidence," § 81.

Presumptions as to laws of other states, see "Criminal Law," § 320; "Evidence," § 80.

#### **FOREIGN MINISTER.\***

*Cross-Reference.*

See "Ambassadors and Consuls."

#### **FOREIGN MISSIONS.\***

*Cross-Reference.*

See "Charities," § 13.

#### **FOREIGN MONEY.**

*Cross-Reference.*

Medium of payment in general, see "Payment," § 12.

#### **FOREIGN PATENTS.\***

*Cross-Reference.*

Limitation of term of patent to term of prior foreign patent, see "Patents," § 132.

#### **FOREIGN RECEIVERSHIP.**

*Cross-References.*

See "Railroads," § 213; "Receivers," §§ 205-211.

#### **FOREIGN TRADE-MARKS AND TRADE-NAMES.**

*Cross-Reference.*

See "Trade-Marks and Trade-Names," § 29.

#### **FOREIGN VESSELS.\***

*Cross-References.*

Admiralty jurisdiction, see "Admiralty," § 6.

Forfeiture for entering United States port, see "Shipping," § 16.

Tonnage duties, see "Shipping," § 7.

#### **FOREIGN WILLS.\***

*Cross-References.*

Admission to probate or record, see "Wills," §§ 238-246, 252.

As color of title, see "Adverse Possession," § 78.

Operation and effect of foreign probate or judgment, see "Wills," § 434.

#### **FOREMAN.\***

*Cross-References.*

Liability of master for injuries to servant from acts or omissions of foreman, see "Master and Servant," § 187.

Of jury, see "Grand Jury," §§ 21, 22; "Jury," § 147.

#### **FORESHORE.**

*Cross-Reference.*

As boundary, see "Boundaries," §§ 12-18.

#### **FORESIGHT.\***

*Cross-Reference.*

Failure to foresee danger as contributory negligence, see "Negligence," § 70.

#### **FORESTS.\***

*Cross-Reference.*

See "Woods and Forests."

### **FORFEITURES.\***

#### *Scope-Note.*

[INCLUDES loss of specific property, real or personal, as punishment for violation of law; nature and scope of such punishment in general; constitutional and statutory provisions relating thereto; in what cases, and as to what persons and property, and for what offenses forfeiture is imposed in general; jurisdiction over and proceedings for condemnation of property as forfeited; judgments or decrees therein, and enforcement thereof; review of proceedings; costs and proceedings for condemnation; effect of forfeiture; rights of informers; waiver or remission of forfeiture; and disposition of property forfeited.]

\*Annotation: Words and Phrases, same title.

[EXCLUDES pecuniary punishments (see "*Penalties*"; "*Fines*"); forfeiture of property or estates therein or rights under contracts for breaches of private duties or obligations (see "*Estates*"; "*Landlord and Tenant*"; "*Deeds*"; "*Contracts*"; "*Insurance*"; and other specific heads); forfeiture of franchises, corporate charters, stock, etc. (see "*Franchises*"; "*Corporations*"); particular offenses as grounds of forfeiture (see "*Food*"; "*Intoxicating Liquors*"; "*Customs Duties*"; "*Internal Revenue*"; and other specific heads); seizures for enforcement of forfeitures (see "*Searches and Seizures*"); and forfeiture of bail bonds, recognizances, etc. (see "*Bail*"; "*Recognizances*").

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature and scope as punishment.
- § 2. Constitutional and statutory provisions.
- § 3. Property subject to forfeiture.
- § 4. Grounds in general.
- § 5. Proceedings for enforcement.
- § 6. Operation and effect.
- § 7. — In general.
- § 8. — As to purchasers.
- § 9. Remission.
- § 10. Disposition of property or proceeds.
- § 11. Rights and remedies of informers.

### *Cross-References.*

- |  |   |
|--|---|
| <p>Dependence of enterprise in forfeitures for success as constituting it a lottery, see "<i>Lotteries</i>," § 3.</p> <p>Discharge of maritime lien by forfeiture of vessel, see "<i>Maritime Liens</i>," § 48.</p> <p>Disposition or devolution of forfeited devises or bequests, see "<i>Wills</i>," §§ 849-866.</p> <p>For breach of condition in deed, see "<i>Deeds</i>," §§ 166-168.</p> <p>For breach of condition in will, see "<i>Wills</i>," §§ 666, 667.</p> <p>For breach of contract, see "<i>Contracts</i>," § 318.</p> <p>For failure of executor to account, see "<i>Executors and Administrators</i>," § 467.</p> <p>For failure to pay toll, see "<i>Turnpikes and Toll Roads</i>," § 50.</p> <p>For nonpayment of assessments on building and loan association stock, see "<i>Building and Loan Associations</i>," § 22.</p> <p>For nonpayment of loan by member of building and loan association, see "<i>Building and Loan Associations</i>," § 36.</p> <p>For nonpayment of taxes, see "<i>Municipal Corporations</i>," § 983; "<i>Taxation</i>," §§ 847-855.</p> <p>For taking or exacting usury, see "<i>Usury</i>," §§ 134-148.</p> <p>For violations of customs laws, see "<i>Customs Duties</i>," §§ 130, 133.</p> <p>For violations of gaming laws, see "<i>Gaming</i>," §§ 58-61.</p> <p>For violations of internal revenue laws, see "<i>Internal Revenue</i>," § 46.</p> <p>For violations of liquor laws, see "<i>Intoxicating Liquors</i>," §§ 20, 244-257.</p> | <p>For violations of navigation laws, see "<i>Shipping</i>," § 16.</p> <p>For violations of postal laws, see "<i>Post Office</i>," § 52.</p> <p>For waste, see "<i>Waste</i>," § 22.</p> <p>Imposition of forfeiture as denial of equal protection of laws, see "<i>Constitutional Law</i>," § 247.</p> <p>Imposition of forfeiture as deprivation of property without due process of law, see "<i>Constitutional Law</i>," § 303.</p> <p>Jurisdiction and relief in equity, see "<i>Equity</i>," § 24.</p> <p>Limitation of actions to enforce forfeitures, see "<i>Limitation of Actions</i>," §§ 35, 59.</p> <p>Of appearance bond of witness as affecting right to continuance, see "<i>Criminal Law</i>," § 598.</p> <p>Of bail bond as ground for denial of continuance of prosecution, see "<i>Criminal Law</i>," § 584.</p> <p>Of bail bonds, see "<i>Bail</i>," §§ 21, 23, 24, 77, 79-96.</p> <p>Of bounty, see "<i>Bounties</i>," § 1.</p> <p>Of bridge franchise, see "<i>Bridges</i>," § 15.</p> <p>Of citizenship as affecting right to vote, see "<i>Elections</i>," §§ 88-94.</p> <p>Of compensation by agent, see "<i>Principal and Agent</i>," § 84.</p> <p>Of compensation by assignee or trustee for benefit of creditors, see "<i>Assignments for Benefit of Creditors</i>," § 393.</p> <p>Of compensation by attorney, see "<i>Attorney and Client</i>," § 153.</p> <p>Of compensation by executor or administrator, see "<i>Executors and Administrators</i>," § 500.</p> |
|--|---|

- Of compensation by tax collector, see "Taxation," § 549.
- Of compensation by trustee, see "Trusts," § 321.
- Of compensation for board of prisoner, see "Prisons," § 18.
- Of copies of work infringing copyright, see "Copyrights," § 71.
- Of corporate stock, see "Corporations," § 243.
- Of credits of prisoner for good behavior, see "Prisons," § 15.
- Of curtesy, see "Curtesy," § 11.
- Of deposits for payment of price of land, see "Vendor and Purchaser," § 335.
- Of devise or legacy, see "Wills," § 719.
- Of easement for misuser, see "Easements," § 31.
- Of estate for life, see "Life Estates," § 4.
- Of exemptions, see "Exemptions," §§ 102-104; "Homestead," §§ 179, 180.
- Of exemptions by bankrupt, see "Bankruptcy," § 399.
- Of ferry franchise or privilege, see "Ferries," § 20.
- Of franchise, see "Franchises," §§ 13-16.
- Of franchise of bank, see "Banks and Banking," §§ 68, 284, 308.
- Of franchise of corporations in general, see "Corporations," §§ 592-630.
- Of franchise of insurance company, see "Insurance," §§ 48, 68.
- Of franchise of railroad company, see "Railroads," § 32.
- Of franchise of street railroad company, see "Street Railroads," § 61.
- Of franchise of telegraph or telephone company, see "Telegraphs and Telephones," § 23.
- Of franchise of turnpike or toll road company, see "Turnpikes and Toll Roads," § 31.
- Of franchise of water company, see "Waters and Water Courses," § 188.
- Of gas or oil lease for nonpayment of rent or royalties, see "Mines and Minerals," § 79.
- Of grant of land under water, see "Navigable Waters," § 37.
- Of grant of right to telegraph or telephone company to use streets or roads, see "Telegraphs and Telephones," § 10.
- Of improvements on Indian lands, see "Indians," § 22.
- Of insurance, see "Insurance," §§ 250-401, 744.
- Of lands ceded to Indian tribe, see "Indians," § 12.
- Of lands granted to railroads, see "Public Lands," § 88.
- Of lease, see "Landlord and Tenant," §§ 111, 112.
- Of licenses in general, see "Licenses," § 38.
- Of licenses to run theaters, see "Theaters and Shows," § 3.
- Of license to make, use, or sell patented article, see "Patents," § 214.
- Of liquor license, see "Intoxicating Liquors," § 106-109.
- Of membership in beneficial association, see "Beneficial Associations," § 10.
- Of membership in unincorporated association, see "Associations," § 10.
- Of mining lease, see "Mines and Minerals," §§ 68, 78.
- Of mining location, see "Mines and Minerals," § 25.
- Of municipal charter, see "Municipal Corporations," § 50.
- Of obscene matter, see "Obscenity," § 22.
- Of office, see "Officers," § 64.
- Of property of unlawful combination, see "Monopolies," § 27.
- Of railroad right of way, see "Railroads," § 82.
- Of railroad ticket, see "Carriers," § 253.
- Of right of inheritance of surviving husband or wife, see "Descent and Distribution," § 63.
- Of rights in oyster or clam beds, see "Fish," § 7.
- Of rights under contract for sale of swamp lands, see "Public Lands," § 61.
- Of rights under contract of purchase of school lands, see "Public Lands," §§ 54, 173.
- Of rights under foreign grants of public lands, see "Public Lands," § 209.
- Of rights under railroad lease, see "Railroads," § 138.
- Of right to acquire state lands, see "Public Lands," §§ 142-187.
- Of right to prove claim against bankrupt's estate, see "Bankruptcy," § 312.
- Of right to remove improvement on leased premises, see "Landlord and Tenant," § 157.
- Of right to salvage, see "Salvage," § 21.
- Of right to use street for purpose other than highway, see "Municipal Corporations," § 690.
- Of salary of fireman, see "Municipal Corporations," § 199.
- Of subscription to corporate stock, see "Corporations," § 93.
- Of vessels for violation of neutrality laws, see "Neutrality Laws," § 4.
- Of vessels or other instrumentalities used in unlawful sealing or fishing, see "Fish," § 16.
- Of wages, see "Master and Servant," § 73.
- Of wages of seamen, see "Seamen," § 21.
- Of water rights, see "Waters and Water Courses," § 151.
- Of water rights in public lands, see "Waters and Water Courses," § 32.
- Of weapons, see "Weapons," § 16.
- Pecuniary punishment, see "Fines"; "Penalties."
- Privilege of witness as to answers tending to subject him to forfeiture, see "Witnesses," § 295.
- Repeal of act appropriating fines, forfeitures, and penalties to the support of a seminary as impairing charter rights, see "Constitutional Law," § 129.
- Right to jury trial, see "Jury," § 19.
- Seizures for enforcement of forfeitures, see "Searches and Seizures."
- Validity of provisions for forfeiture on failure to satisfy lien, see "Liens," § 3.
- Venue, see "Venue," § 9.
- Vested rights in, see "Constitutional Law," § 104.

### § 1. Nature and scope as punishment.

#### *Annotation.*

Forfeiture as cruel and unusual punishment.—35 L. R. A. 569, note.

### § 2. Constitutional and statutory provisions.

#### *Annotation.*

Validity of statute or ordinance providing for forfeiture of liquor license upon conviction for violation of law irrespective of appeal.—29 L. R. A. (N. S.) 417, note.

### § 3. Property subject to forfeiture.

#### *Annotation.*

Forfeiture of property found in bawdy-house.—52 L. R. A. (N. S.) 932, note.

### § 4. Grounds in general.

#### *Annotation.*

Forfeiture of license by aiding infringement of, or attempt to defeat patent.—37 L. R. A. (N. S.) 821, note.

Forfeiture for violation of revenue laws.—2 L. R. A. (N. S.) 185, note.

Forfeiture for taking or reserving of illegal interest by national bank.—56 L. R. A. 673, note.

Forfeiture on conditional sale.—32 L. R. A. 469, note.

Forfeiture in case of partly performed contract for services.—24 L. R. A. 231, note.

(a) Lands granted by the lord proprietary were forfeited to him on the attainder of the grantee for a felony.—*Thomas v. Hamilton*, 1 H. & McH. 190.

§§ 5-11. (See Analysis.)

## FORGERY.\*

### *Scope-Note.*

[INCLUDES falsely and fraudulently making or materially altering instruments in writing, other than circulating notes issued as money or other government obligations or securities, and uttering such forged instruments; nature and elements of the crimes of forgery, uttering and publishing forged instruments, etc., and degrees thereof; nature and extent of criminal responsibility therefor, and grounds of defense; and prosecution and punishment of such acts as public offenses.

[EXCLUDES effect of alterations of instruments in writing in general (see "*Alteration of Instruments*"), rights and liabilities of banks paying, discounting, etc., forged or altered paper (see "*Banks and Banking*"), and of parties to and holders of forged or altered promissory notes, bills of exchange, checks, etc. (see "*Bills and Notes*"), bonds (see "*Bonds*"), and other particular classes of instruments (see specific heads); and offenses of making, passing, etc., counterfeit coin or other money or government securities (see "*Counterfeiting*").

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature of offense in general.
- § 2. Statutory provisions.
- § 3. Elements of offenses.
- § 4. — In general.
- § 5. — Intent.
- § 6. — Want of authority.
- § 7. — Nature of instrument.
- § 8. — Name or signature used.
- § 9. — Making false instrument or signature.
- § 10. — Alteration of instrument.
- § 11. — Similitude of false instrument or signature to genuine.
- § 12. — Apparent legal efficacy or operation of instrument.
- § 13. — Fraudulent use of instrument.
- § 14. — Injury from forgery.

\*Annotation: Words and Phrases, same title.

- § 15. False entries or records, and alteration of entries or records.
- § 16. Uttering or publishing forged instrument.
- § 17. Possession of forged instrument or of means of forgery.
- § 18. Degrees.
- § 19. Attempts.
- § 20. Defenses.
- § 21. Persons liable.
- § 22. Jurisdiction.
- § 23. Venue.
- § 24. Preliminary proceedings in prosecution.
- § 25. Indictment or information.
- § 26. — Requisites and sufficiency in general.
- § 27. — Intent.
- § 28. — Description of or setting forth instrument.
- § 29. — Facts extrinsic to instrument in general.
- § 30. — Making or alteration of instrument.
- § 31. — Falsification of entries or records.
- § 32. — Uttering or publishing forged instrument.
- § 33. — Possession of forged instrument or of means of forgery.
- § 34. — Issues, proof, and variance.
- § 35. Presumptions and burden of proof.
- § 36. Admissibility of evidence.
- § 37. — In general.
- § 38. — Intent and knowledge.
- § 39. — Making or alteration of instrument, signature, or entry.
- § 40. — Uttering or publishing forged instrument.
- § 41. — Possession of forged instrument or of means of forgery.
- § 42. — Incriminating circumstances.
- § 43. — Matters of defense.
- § 44. Weight and sufficiency of evidence.
- § 45. Trial.
- § 46. — Conduct in general.
- § 47. — Questions for jury.
- § 48. — Instructions.
- § 49. — Verdict.
- § 50. Appeal and error.
- § 51. Sentence and punishment.

#### *Cross-References.*

- |  |  |
|--|--|
| <p>See "Counterfeiting."</p> <p>Collection of forged paper by bank, see "Banks and Banking," § 174.</p> <p>Defense as against bona fide purchaser of bill or note, see "Bills and Notes," § 377.</p> <p>Deposit of forged paper in bank, see "Banks and Banking," § 125.</p> <p>Discount of forged paper by bank, see "Banks and Banking," § 186.</p> <p>Effect of forged indorsement on note taken in payment of debt, see "Payment," § 17.</p> <p>Former jeopardy, see "Criminal Law," §§ 170, 186, 196, 200, 202.</p> <p>Ground for equitable relief against judgment, see "Judgment," § 444.</p> | <p>Ground for vacation of judgment, see "Judgment," § 373.</p> <p>Grounds for new trial in general, see "Criminal Law," §§ 917, 941.</p> <p>Liability of assignor of forged note, see "Bills and Notes," §§ 324, 325.</p> <p>Liability of telegraph company for transmitting forged message, see "Telegraphs and Telephones," § 41.</p> <p>Liability on forged indorsement of bill or note, see "Bills and Notes," §§ 239, 279, 381.</p> <p>Limitations, see "Criminal Law," §§ 157, 159, 330.</p> |
|--|--|

Limitations against purchaser of forged securities, see "Limitation of Actions," § 49.

Malicious prosecution, see "Malicious Prosecution," § 20.

Materiality of false testimony as affecting liability for perjury, see "Perjury," § 11.

Of certificate or transfer of corporate stock, see "Corporations," § 148.

Of marks or brands on animals, see "Animals," § 11.

Of name of one obligor on bond as affecting liability of others, see "Bonds," § 13.

Of naturalization papers, see "Aliens," § 72.

Of railroad ticket, see "Carriers," § 22.

Of will, see "Wills," § 302.

Payment of forged paper by bank, see "Banks and Banking," §§ 147-149.

Recovery by assignee of forged note against assignor without judicial determination of forgery, see "Bills and Notes," § 324.

Rights and liabilities of bank on paying forged or altered paper, see "Banks and Banking," § 190.

Sending forged telegrams, see "Telegraphs and Telephones," § 79.

Slandorous imputations, see "Libel and Slander," § 7.

Transfer of bill or notes by forged indorsement, see "Bills and Notes," § 201.

### § 1. Nature of offense in general.

#### *Cross-Reference.*

False pretenses and forgery in one transaction, see "False Pretenses," § 20.

### § 2. Statutory provisions.

#### *Cross-Reference*

Subject and title of act, see "Statutes," § 118.

### §§ 3-14. Elements of offenses.

#### *Annotation.*

Fraudulently procuring genuine signature as forgery.—26 L. R. A. (N. S.) 138, note.

Whether the forgery of different instruments at one time constitutes but one, or more than one, crime.—61 L. R. A. 819, note.

Distinction between "order" and "request."—32 L. R. A. (N. S.) 327, note.

Order for goods in carrier's possession as subject of forgery.—32 L. R. A. (N. S.) 338, note.

Forgery by making or altering mere memorandum.—54 L. R. A. 794, note.

Forgery of worthless instruments.—24 L. R. A. 33, note.

What constitutes legal efficacy.—24 L. R. A. 34, note.

(a) The fact that an instrument does not bear a stamp, as required by the internal revenue laws of the United States, does not render it void in such a sense that a prosecution for forging and uttering it cannot be sustained in a state court.—*Laird v. State*, 61 Md. 309. [*Cited and annotated* in 24 L. R. A. 45, on forgery of worthless instruments; in 46 L. R. A. 455, on want of stamp on instrument as affecting criminal prosecution.]

(b) A bank check is a bill of exchange, and the forgery of an indorsement thereon is a felony, under Code 1860, art. 30, § 24.—*Hawthorn v. State*, 56 Md. 530. (See Code 1911 [vol. 3], art. 27, § 41.)

(c) A certificate of indebtedness, issued by the mayor and city council of Baltimore, known as "city stock," is a bond, within the meaning of Code 1860, art. 30, § 24, relating to forgeries.—*Bishop v. State*, 55 Md. 138. (See Code 1911 [vol. 3], art. 27, § 41.) [*Cited and annotated* in 24 L. R. A. 44, on forgery of worthless instruments; in 62 L. R. A. 250, on evidence of other crimes in criminal cases.]

(d) An indorsement of a certificate of indebtedness issued by the mayor and city council of Baltimore, known as "city stock," with fraudulent intent, may be a forgery within the meaning of the statute, though the certificate is upon its face transferable only at the mayor's office in person or by attorney; this provision being for the protection of the corporation.—*Bishop v. State*, 55 Md. 138. [*Cited and annotated*, see *supra*.]

(e) In an action of slander, it appeared that the defendant had charged the plaintiff with having forged the following instrument, which it was alleged had been given to the defendant's slave to assist his escape: "Know all men by these presents, that the said negro boy was the property of my uncle (R) etc. He died without any heirs, he never married, therefore he made all his negroes free, by will and testament. The boy's name is S. He always behaved honestly and industriously, is a good hand about horses, and a good wagoner. The farmers in our part have, for common, all slaves or hands of their own. Therefore he wants to try some other part. The commissary's office at F. will prove his freedom. Witness, etc.: J. [Seal.]" *Held*, upon de-



murrer, that this instrument, if genuine, might have prejudiced J. by subjecting him to a claim for damages to the owner of any slave to whom it might have been given, or to a criminal prosecution, if such slave absconded; and that it was therefore the subject of forgery at common law, and sustained the action.—*Arnold v. Cost*, 3 G. & J. 219, 22 Am. Dec. 302. [Cited and annotated in 24 L. R. A. 11, on forgery of worthless instruments.]

§§ 15-19. (See Analysis.)

## § 20. Defenses.

### Cross-References.

Evidence, see post, § 43.

Drunkenness, see "Criminal Law," § 55.

### Annotation.

Ratification of forged instrument.—36 L. R. A. (N. S.) 1006, note.

## § 21. Persons liable.

## § 22. Jurisdiction.

## § 23. Venue.

### Cross-References.

Venue in general, see "Criminal Law," § 112.

Venue of prosecution against accessory, see "Criminal Law," § 110.

## § 24. Preliminary proceedings in prosecution.

### Cross-Reference.

Preliminary complaint, see "Criminal Law," § 211.

## §§ 25-34. Indictment or information.

### Cross-References.

Aider by verdict, see "Indictment and Information," § 202.

Amendment, see "Indictment and Information," §§ 160, 161.

Certainty, see "Indictment and Information," § 71.

Conviction of offense included in charge, see "Indictment and Information," § 191.

Designation of accused, see "Indictment and Information," § 81.

Designation of names forged, idem sonans, see "Names," § 16.

Duplicity, see "Indictment and Information," § 125.

Election between counts, see "Indictment and Information," § 132.

Felonious character of act, see "Indictment and Information," § 91.

Joinder of counts, see "Indictment and Information," §§ 127-129.

Language of statute, see "Indictment and Information," § 110.

Pleading conclusions, see "Indictment and Information," § 63.

Pleading in avoidance of bar by limitations, see "Indictment and Information," § 67.

Repugnancy, see "Indictment and Information," § 73.

Separate counts, see "Indictment and Information," §§ 98, 100.

Successive indictments, see "Indictment and Information," § 15.

Sufficiency to support extradition, see "Extradition," § 32.

Surplusage, see "Indictment and Information," § 120.

### Annotation.

Necessity of setting out copy of forged instrument in indictment.—31 L. R. A. (N. S.) 215, note.

Necessity of naming person to whom instrument was passed.—31 L. R. A. (N. S.) 1046, note.

## § 35. Presumptions and burden of proof.

### Cross-References.

Presumptions from failure of accused to testify, see "Criminal Law," § 317.

Presumptions from failure to call witness in prosecution for, see "Criminal Law," § 317.

Suppression or spoliation of evidence, see "Criminal Law," § 318.

### Annotation.

Presumption as to time of alteration in written instrument.—39 L. R. A. (N. S.) 100, note.

## § 36. Admissibility of evidence.

### Cross-References.

Acts and declarations of conspirators and codefendants, see "Criminal Law," §§ 422, 423.

Admissions, see "Criminal Law," §§ 406, 407.

As to forgery of signatures to mortgage, see "Mortgages," § 74.

Best and secondary evidence, see "Criminal Law," §§ 398-404.

Confessions, see "Criminal Law," §§ 518, 531.

Declarations, see "Criminal Law," §§ 412, 413, 415, 417.

Demonstrative evidence, see "Criminal Law," § 404.

Documentary evidence, see "Criminal Law," §§ 438, 441.

Hearsay, see "Criminal Law," §§ 419, 420, 421.

In civil proceeding in general, see "Evidence," §§ 135, 561-567, 573.

Opinion evidence, see "Criminal Law," §§ 450, 452, 458, 483.

Other offenses, see "Criminal Law," §§ 369, 370, 372.

Res gestæ, see "Criminal Law," §§ 363-365.

Testimony of accomplices and codefendants, see "Criminal Law," § 507½.

Waiver of objections, see "Criminal Law," § 899.

## § 37.—In general.

**§ 38.— Intent and knowledge.***Cross-References.*

Declarations by accused showing, see "Criminal Law," § 406.  
Other offenses showing, see "Criminal Law," §§ 369-371.

**§ 39.— Making or alteration of instrument, signature, or entry.***Cross-Reference.*

Opinion evidence, see "Criminal Law," §§ 478, 486, 491.

**§ 40.— Uttering or publishing forged instrument.****§ 41.— Possession of forged instrument or of means of forgery.***Cross-References.*

Documentary evidence, see "Criminal Law," § 447.  
Parol evidence, see "Criminal Law," § 447.

(a) On indictment for forging and uttering a certain check, evidence that at the time of defendant's arrest he had on his person checks, and about that time had passed others, all of which were forgeries, is admissible to show his knowledge that the check set out in the indictment was forged, and that his purpose in the forgery and the uttering was to defraud.—*Bishop v. State*, 55 Md. 138. [Cited and annotated in 24 L. R. A. 44, on forgery of worthless instruments; in 62 L. R. A. 250, on evidence of other crimes in criminal cases.]

**§ 42.— Incriminating circumstances.***Cross-Reference.*

Harmless error, see "Criminal Law," § 1169.

**§ 43.— Matters of defense.***Cross-Reference.*

Matters explanatory of facts in evidence, see "Criminal Law," § 361.

**§ 44.— Weight and sufficiency of evidence.***Cross-References.*

Corroboration of accomplice, see "Criminal Law," § 511.  
Identity of accused, see "Criminal Law," § 566.  
Testimony of accomplices and codefendants, see "Criminal Law," §§ 507, 511.  
Venue of prosecution, see "Criminal Law," § 564.

**§ 45.— Trial.***Cross-References.*

Continuance, see "Criminal Law," §§ 586, 594, 595, 597.  
Grounds for arrest of judgment, see "Criminal Law," §§ 970, 972.

**§ 46.— Conduct in general.***Cross-References.*

Argument of counsel, see "Criminal Law," § 720.  
Effect of admission of evidence, see "Criminal Law," § 673.  
Offer of proof, see "Criminal Law," § 670.  
Order of proof, see "Criminal Law," §§ 680, 686.  
Striking out evidence, see "Criminal Law," § 696.  
Withdrawal of particular counts, see "Criminal Law," § 750.

**§ 47.— Questions for jury.***Cross-References.*

Assumption as to facts, see "Criminal Law," § 761.  
Former jeopardy, see "Criminal Law," § 739.  
Statement and review of evidence, see "Criminal Law," § 756.  
Venue, see "Criminal Law," § 737.  
Who are accomplices, see "Criminal Law," § 742.

**§ 48.— Instructions.***Cross-References.*

As to intoxication, see "Criminal Law," § 774.  
Circumstantial evidence, see "Criminal Law," § 784.  
Construction of charge as a whole, see "Criminal Law," § 822.  
Curing error by giving other instructions, see "Criminal Law," § 823.  
Harmless error, see "Criminal Law," § 1172.  
Issues of case, see "Criminal Law," § 770.  
Punishment, see "Criminal Law," § 796.  
Reasonable doubt, see "Criminal Law," §§ 782, 789.  
Repetition, see "Criminal Law," § 806.  
Requests, see "Criminal Law," §§ 825, 829, 834.  
Testimony of accomplices, see "Criminal Law," § 780.  
Undue prominence of particular facts, see "Criminal Law," § 811.

**§ 49.— Verdict.***Cross-References.*

Amendment, see "Criminal Law," § 888.  
Harmless error, see "Criminal Law," § 1175.  
Several counts, see "Criminal Law," § 878.

**§ 50.— Appeal and error.***Cross-References.*

Grounds for dismissal of appeal, see "Criminal Law," § 1131.  
Harmless error, see "Criminal Law," §§ 1169, 1170, 1170½, 1172, 1173, 1175, 1177.  
Modification or correction of judgment, see "Criminal Law," § 1184.  
Necessity of bill of exceptions, see "Criminal Law," § 1090.

Presumptions on appeal, see "Criminal Law," § 1144.  
 Reversal on appeal, see "Criminal Law," § 1187.

### § 51. Sentence and punishment.

#### *Cross-References.*

Amendment of judgment record, see "Criminal Law," § 996.  
 Conformity of sentence to verdict, see "Criminal Law," § 992.  
 Effect of change of punishment, see "Criminal Law," § 1207.  
 Harmless error, see "Criminal Law," § 1177.  
 Modification or correction of judgment on appeal, see "Criminal Law," § 1184.  
 Requisites and validity of sentence in general, see "Criminal Law," § 991.

### FORMAL DEFECTS AND ERRORS.\*

#### *Cross-References.*

Ground for reversal of judgment, see "Appeal and Error," § 1170.  
 Review, see "Appeal and Error," § 1034.  
 Waiver of formal defects in pleading, see "Pleading," § 407.

### FORMAL PARTIES.\*

#### *Cross-Reference.*

See "Parties," § 4.

### FORMA PAUPERIS.

#### *Cross-References.*

Action or defense in forma pauperis, see "Costs," §§ 128-133; "Wills," § 407.  
 Certiorari proceedings, see "Certiorari," § 43.  
 Payment of costs as condition to opening default by one suing as poor person, see "Judgment," § 169.  
 Proceedings in admiralty, see "Admiralty," § 123.  
 Proceedings on appeal or writ of error, see "Appeal and Error," §§ 389, 473; "Criminal Law," § 1077; "Justices of the Peace," § 159.

### FORMEDON.\*

#### *Cross-Reference.*

Writ of, see "Real Actions," § 4.

### FORMER ACTION PENDING.

#### *Cross-Reference.*

Ground for abatement of subsequent action, see "Abatement and Revival," §§ 4-17.

### FORMER ADJUDICATION.\*

#### *Cross-References.*

See "Judgment," §§ 540-751.  
 As defense to action by owner for appropriation of property for public use, see "Eminent Domain," § 283.  
 Pleading and proof of former adjudication, see "Judgment," §§ 948-958.  
 Raising defense by motion to dismiss, see "Equity," § 362.

### FORMER JEOPARDY.\*

#### *Cross-References.*

Bar to prosecution, see "Criminal Law," §§ 161-204.  
 Double punishment for single offense against military laws, see "Army and Navy," § 46.  
 Ground for habeas corpus, see "Habeas Corpus," § 31.  
 Plea of former jeopardy, see "Criminal Law," §§ 290-297.  
 Questions for jury, see "Criminal Law," § 739.  
 Raising question after remand by appellate court, see "Criminal Law," § 1192.  
 Right to jury trial on plea, see "Jury," § 21.

### FORMS OF ACTION.

#### *Cross-References.*

See "Action," §§ 16-37, 41, 44; "Action on the Case"; "Assumpsit, Action of"; "Covenant, Action of"; "Debt, Action of"; "Detinue"; "Ejectment"; "Entry, Writ of"; "Forcible Entry and Detainer," §§ 1-48; "Replevin"; "Trespass," §§ 16-75; "Trespass to Try Title"; "Trover and Conversion."  
 Abolition of distinctions, see "Action," §§ 25, 32.  
 Amendment in appellate court changing form of action, see "Appeal and Error," § 896.  
 As affecting mode of review, see "Appeal and Error," §§ 3-8.  
 As affecting review in absence of assignment of error, see "Appeal and Error," § 719.  
 As affecting right to review, see "Appeal and Error," § 41.  
 As affecting trial de novo on appeal, see "Appeal and Error," § 893.  
 As questions presented for review, see "Appeal and Error," § 673.  
 Book account or book debt, see "Account, Action on," §§ 16-25.  
 By assignee for dissolution of attachment on assigned property, see "Assignments for Benefit of Creditors," § 268.  
 By assignee in general, see "Assignments," § 127.  
 By assignee of officer to recover salary, see "Assignments," § 119.  
 By creditors in aid of assignment, see "Assignments for Benefit of Creditors," § 295.  
 By town against owner of dog for amount paid to owner of sheep killed, see "Animals," § 88.  
 Case distinguished from other actions, see "Action," § 30.  
 Change of form by amendment, see "Pleading," § 249.  
 Change of theory or form of action on appeal, see "Appeal and Error," § 171.  
 Debt distinguished from other actions, see "Action," § 30.  
 Error as to form, see "Action," § 37.  
 Error as to form as ground for dismissal, see "Dismissal and Nonsuit," § 54.

\*Annotation: Words and Phrases, same title.

Estoppel to allege error, see "Appeal and Error," § 882.  
 Following state statutes and practice in federal courts, see "Courts," § 342.  
 For damages by trespassing animals, see "Animals," § 100.  
 For deportation of Chinese, see "Aliens," § 32.  
 For encroachment on adjoining land, see "Adjoining Landowners," § 9.  
 For recovery of penalties for keeping sheep-killing dogs, see "Animals," § 86.  
 Harmless error as to form, see "Appeal and Error," § 1035.  
 Joinder of different forms of action, see "Action," §§ 38-52.  
 Objections first raised in appellate court, see "Appeal and Error," §§ 182-184.  
 On appeal bond, see "Appeal and Error," § 1239.  
 On assignee's bond, see "Assignments for Benefit of Creditors," § 414.

On award of arbitrators, see "Arbitration and Award," § 85.  
 Opening account stated, see "Account Stated," § 11.  
 Prejudicial effect of error, see "Appeal and Error," § 1035.  
 Presumptions on appeal as to grounds and forms of action or defense, see "Appeal and Error," § 910.  
 Proceedings to enforce payment of claims, see "Assignments for Benefit of Creditors," § 324.  
 Relief from award of arbitrators, see "Arbitration and Award," § 78.  
 Reversal for error in form of action, see "Appeal and Error," § 1167.  
 To compel restitution after reversal of judgment, see "Appeal and Error," § 1208.  
 To set aside assignment, see "Assignments for Benefit of Creditors," § 343.  
 Trespass distinguished from other actions, see "Action," § 30.

## FORNICATION.\*

### *Scope-Note.*

[INCLUDES sexual intercourse by unmarried persons, not constituting or not regarded as an element in any other distinct offense; nature and extent of criminal responsibility therefor, and grounds of defense; and prosecution and punishment of such acts as public offenses.

[EXCLUDES offenses in which fornication is an element merely (see "*Adultery*"; "*Lewdness*"; "*Seduction*"; and other specific heads).

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature and elements of offenses.
- § 2. Persons liable.
- § 3. Indictment or information.
- § 4. — Requisites and sufficiency in general.
- § 5. — Issues, proof, and variance.
- § 6. Evidence.
- § 7. — Presumptions and burden of proof.
- § 8. — Admissibility.
- § 9. — Weight and sufficiency.
- § 10. Trial and review.
- § 11. Sentence and punishment.

### *Cross-References.*

See "*Adultery*"; "*Incest*"; "*Lewdness*"; "*Miscegenation*"; "*Prostitution*"; "*Seduction*."

As consideration for promise of marriage, see "*Breach of Marriage Promise*," § 7.

As defense to action for breach of promise of marriage, see "*Breach of Marriage Promise*," § 13.

Competency of husband as witness, see "*Witnesses*," § 52.

Conviction of offense included in charge, see

"*Indictment and Information*," § 191.

Election between acts on trial, see "*Criminal Law*," § 678.

Election between counts, see "*Indictment and Information*," § 132.

Libel or slander in charging another with offense, see "*Libel and Slander*," § 7.

Objections to evidence, see "*Criminal Law*," § 698.

Testimony of accomplices and codefendants, see "*Criminal Law*," § 511.

\*Annotation: Words and Phrases, same title.

*Annotation.*

Evidence of other crimes in prosecution for fornication.—62 L. R. A. 329, note.

Cruel and unusual punishment of fornication.—35 L. R. A. 572, note.

**FORSWEARING.\****Cross-Reference.*

See "Perjury."

**FORTHCOMING BONDS.\****Cross-References.*

See "Attachment," § 191; "Detinue," § 30; "Execution," §§ 151-155; "Replevin," § 49.

As dispensing with notice of claim to property attached, see "Attachment," § 296.

As estopping third person giving bond from claiming property, see "Attachment," § 294.

Assignability, see "Bonds," § 83.

By claimant of attached property, see "Attachment," § 298.

By claimant of property garnished, see "Garnishment," § 210.

Execution of forthcoming bond as appearance, see "Appearance," § 8.

Giving forthcoming bond as affecting vacation of levy, see "Attachment," § 174.

In suit to foreclose lien, see "Liens," § 22.

Liabilities on forthcoming bonds in attachment, see "Attachment," §§ 330-354.

Liabilities on forthcoming bond in replevin, see "Replevin," § 120.

Right of person giving bond in attachment to interplead, see "Attachment," § 291.

**FORTS AND MILITARY POSTS.***Cross-Reference.*

Judicial notice of, see "Criminal Law," § 304.

**FORTUITOUS EVENT.\****Cross-References.*

Affecting carrier's liability for injury to live stock, see "Carriers," § 215.

Affecting liability for demurrage, see "Shipping," § 179.

Affecting liability for negligence or default in transmission or delivery of telegram, see "Telegraphs and Telephones," § 50.

Affecting liability of agister, see "Animals," § 23.

Affecting liability of carrier for delay in transportation of goods, see "Carriers," § 99.

Affecting liability of carrier for injury to passenger, see "Carriers," § 285.

Affecting liability of carrier for loss of or injuries to live stock, see "Carriers," § 213.

Affecting liability of carrier for loss of or injury to goods, see "Carriers," § 119.

Affording defense to breach of promise to marry, see "Breach of Marriage Promise," § 13.

As proximate cause of injury, see "Negligence," § 63.

Excuse for nonperformance of contract, see "Contracts," § 303.

Excusing performance of contract of transportation, see "Carriers," § 64.

Injuries from electric current, see "Electricity," § 16.

Justifying refusal of carrier to receive goods, see "Carriers," § 39.

Liability for injuries caused by accidental explosion, see "Explosives," § 8.

Liability of railroad company for injuries to property from spread of fire, see "Railroads," § 465.

Loss of passenger's baggage, see "Carriers," § 402.

Master's liability for injuries to servant, see "Master and Servant," § 139.

Preventing performance of contract of carriage, see "Shipping," § 165.

**FORTUNE TELLERS.\****Cross-Reference.*

See "Indictment and Information," §§ 72, 110, 125.

**FORUM.***Cross-Reference.*

See "Courts."

**FORWARDERS.\****Cross-Reference.*

See "Carriers."

**FOUNDINGS.\****Cross-References.*

See "Asylums."

Consent to adoption, see "Adoption," § 7.

Petition for adoption, see "Adoption," § 11.

**FOUNTAINS.\****Cross-Reference.*

Drinking fountains in streets, power of city to grant rights, see "Municipal Corporations," §§ 680, 681, 683.

**FOUR CORNERS.***Cross-References.*

Construction of instruments as a whole, see "Contracts," §§ 143, 147; "Deeds," § 95; "Wills," § 455.

**FOURTEENTH AMENDMENT.***Cross-References.*

See "Citizens," § 11; "Constitutional Law," §§ 207, 209-320.

**FOURTH OF JULY.\****Cross-References.*

See "Holidays."

\*Annotation: Words and Phrases, same title.

Violations of municipal regulations as to discharge of fireworks, see "Municipal Corporations," § 632.

### **FOWLS.\***

#### *Cross-References.*

See "Game."

Domestic fowls as animals within statutes prohibiting cruelty, see "Animals," § 40.

### **FOX HUNTING.**

#### *Cross-Reference.*

Prosecution for cruelty to animals, see "Animals," § 42.

### **FRACTIONS.**

#### *Cross-Reference.*

Of day, in computation of time, see "Time," § 11.

## **FRANCHISES.\***

### *Scope-Note.*

[INCLUDES nature and incidents of special rights, privileges, and powers which can be exercised legally only under a grant from the government, and exercise and protection of franchises in general.

[EXCLUDES validity of grants of exclusive privileges (see "*Monopolies*"); corporate franchises (see "*Corporations*"); and franchises necessary or incident to particular kinds of business or occupation (see specific heads).

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature of right.
- § 2. Grants in general.
- § 3. Extent and exercise of rights.
- § 4. Exclusiveness and conflicting grants.
- § 5. Obstruction or disturbance.
- § 6. Transfer or incumbrance.
- § 7. — In general.
- § 8. — Sale or assignment.
- § 9. — Lease.
- § 10. — Mortgage.
- § 11. Duration and termination in general.
- § 12. Forfeiture.
- § 13. — Grounds.
- § 14. — Waiver and estoppel.
- § 15. — Proceedings to enforce.
- § 16. — Operation and effect.

### *Cross-References.*

Abuse of franchise by organized commission merchants, see "Exchanges," § 3.

Appellate jurisdiction of cases involving franchise, see "Courts," §§ 213, 219, 220.

As vested rights, see "Constitutional Law," § 101.

Combinations to control exercise, see "Monopolies," § 19.

Compensation for franchise taken for public use, see "Eminent Domain," § 86.

Corporate franchises in general, see "Banks and Banking," §§ 86-101, 284; "Bridges," § 15; "Canals," § 9; "Carriers," § 7; "Charities," § 40; "Colleges and Univer-

sities," § 5; "Corporations," §§ 31, 592-630; "Electricity," §§ 4, 5; "Gas," § 6; "Insurance," §§ 36, 57; "Mines and Minerals," § 105; "Railroads," §§ 18, 31, 32, 118-144; "Street Railroads," §§ 22-26, 28-30, 48, 60, 61; "Telegraphs and Telephones," §§ 7, 16, 22½, 23; "Turnpikes and Toll Roads," §§ 9, 29-31; "Waters and Water Courses," §§ 188, 232, 234; "Wharves," § 7.

Double taxation, see "Taxation," § 47.

Execution on franchises, see "Execution," § 27.

\*Annotation: Words and Phrases. same title.

Forfeiture of corporate franchises, see "Corporations," §§ 592-630.  
 Grant and regulation by special or local law, see "Statutes," § 79.  
 Grant of exclusive franchises as monopolies, see "Monopolies," §§ 1-7.  
 Grant of franchise where other franchise already exists as champertous, see "Champerty and Maintenance," § 7.  
 Grants by municipal corporations in general, see "Municipal Corporations," §§ 285, 309.  
 Grants by municipal corporations, legislative control, see "Municipal Corporations," § 71.  
 Grants by municipal corporations, right to use public buildings, parks, or other public property, see "Municipal Corporations," § 722.  
 Grants by municipal corporations, right to use street for purposes other than highway, see "Municipal Corporations," §§ 680-690.  
 Injunctions involving corporate franchises, see "Injunctions," §§ 65, 67, 68.  
 Laws affecting franchises as impairing obligation of contracts, see "Constitutional Law," §§ 128, 132, 133.  
 Liability of corporate franchises to taxation, see "Taxation," §§ 67, 117, 165.  
 License tax on corporate franchises and privileges in general, see "Licenses," § 18.

### § 1. Nature of right.

#### Annotation.

Franchises of railroad company, whether real or personal property.—66 L. R. A. 36, note.

### § 2. Grants in general.

#### Cross-Reference.

Subject and title of act relating to franchise tax, see "Statutes," § 121.

#### Annotation.

Right to exact additional compensation when extending street franchise to cover additional purposes.—L. R. A. 1915E, 165, note.

Grant of franchise to electrical subway company.—34 L. R. A. 369, note.

(a) The right to a franchise is not to be presumed in proceedings based on the existence of the right.—*Purnell v. McLane*, 98 Md. 589, 56 Atl. 830. [Cited and annotated in 22 L. R. A. (N. S.) 933, on power of municipality in absence of express authority to grant street franchises.]

### § 3. Extent and exercise of rights.

#### Annotation.

Duties incident to exercise of franchise by independent contractor.—66 L. R. A. 136, note.

### § 4. Exclusiveness and conflicting grants.

#### Annotation.

Lottery franchise, see "Lotteries," § 9.  
 Municipal interference with franchise as taking property without due process of law, see "Constitutional Law," § 278.  
 New trial in action for usurpation of franchise, see "New Trial," § 2.  
 Place of taxation of corporate franchises, see "Taxation," § 276.  
 Power of state to tax franchise granted by United States, see "Taxation," § 8.  
 Quo Warranto to determine right to exercise corporate franchise, see "Quo Warranto," §§ 16-19.  
 Revocation of franchise as impairing obligation of contract, see "Constitutional Law," § 121.  
 Subjects and titles of acts relating to franchises, see "Statutes," §§ 112, 121.  
 Validity of ordinance granting franchise to corporation not yet organized, see "Municipal Corporations," § 111.  
 Valuation for corporate franchises for taxation, see "Taxation," § 376.  
 Work of independent contractor in exercise of franchise, see "Master and Servant," § 317.  
 To erect and maintain wharves, see "Wharves," § 7.  
 To establish and operate ferry, see "Ferries," §§ 10-20.

Right of owner of franchise for public benefits which is not exclusive to injunction against its invasion without right.—29 L. R. A. (N. S.) 77, note.  
 Exclusiveness of franchise of water company.—61 L. R. A. 80, note.

### § 5. Obstruction or disturbance.

### § 6-10. Transfer or incumbrance.

#### Annotation.

Assignability of franchise of water company.—61 L. R. A. 98, note.

Right to transfer ferry franchise.—59 L. R. A. 543, note.

Right to transfer or mortgage privilege to use streets for telegraph, telephone, or other quasi-public purposes.—47 L. R. A. 87, note.

Judicial sale of franchises.—20 L. R. A. 737, note.

### § 11. Duration and termination in general.

#### Annotation.

Termination of franchise for toll bridge.—58 L. R. A. 169; 30 L. R. A. (N. S.) 364, notes.

Rights of water company after expiration of franchise.—61 L. R. A. 107, note.

### § 12-16. Forfeiture.

#### Cross-Reference.

Corporate franchises, see "Corporations," §§ 592-630.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**Annotation.**

Forfeiture of franchise of water company for failure to comply with contract.—61 L. R. A. 93, note.

(a) That a city might obtain a larger payment for a franchise will not justify its revocation.—*Chesapeake & P. Tel. Co. v. City of Baltimore*, 89 Md. 689, 43 Atl. 784, 44 Atl. 1033. [Cited and annotated in 50 L. R. A. 146, 149, on privilege of using streets as contract within provision against impairing obligation; in 6 L. R. A. (N. S.) 782, on remedy to make street franchise available as against municipality.]

**FRATERNAL ASSOCIATIONS.\*****Cross-References.**

See "Beneficial Associations"; "Insurance," §§ 687-834.

College fraternities, see "Clubs," § 10.

Regulations of school board in respect to secret fraternities among pupils, see "Schools and School Districts," § 175.

**FRATERNITIES.\*****Cross-Reference.**

Liability of property of Greek letter fraternity to taxation, see "Taxation," § 243.

**FRAUD.\*****Scope-Note.**

[INCLUDES deception or perversion of the truth by statements, acts, or omissions intended or operating to injure another by depriving him of any property or right or obtaining any promise or unlawful or unfair advantage, not constituting or not regarded as a tort or offense of any distinct class; evidence relating thereto; nature and extent of liability for such fraud in general; actions for deceit and like actions for damages for fraud; and criminal responsibility for fraud in general, and prosecution and punishment thereof as a public offense.

[EXCLUDES fraud in transactions between persons in particular personal relations (see "*Husband and Wife*"; "*Attorney and Client*"; "*Principal and Agent*"; and other specific heads); effect of fraud on conveyances, contracts, and other transactions (see "*Deeds*"; "*Mortgages*"; "*Contracts*"; "*Bonds*"; "*Bills and Notes*"; "*Insurance*"; and other specific heads); fraud as ground for cancellation, surrender, rescission, or reformation of instruments in writing (see "*Cancellation of Instruments*"; "*Reformation of Instruments*";); conveyances fraudulent as to creditors, purchasers, etc. (see "*Fraudulent Conveyances*";); requirements and operation of statute of frauds (see "*Frauds, Statute of*";); suspension of statutes of limitations on ground of fraud (see "*Limitation of Actions*";); fraud as ground for particular remedies in actions (see "*Arrest*"; "*Attachment*"; "*Execution*"; "*Discovery*";); conspiracies to defraud (see "*Conspiracy*";); and particular classes of offenses involving fraud (see "*False Personation*"; "*False Pretenses*"; "*Forgery*"; "*Embezzlement*").

[For complete list of matters excluded, see cross-references, post.]

**Analysis.****I. Deception Constituting Fraud, and Liability Therefor.**

- § 1. Nature of fraud.
- § 2. Elements of actual fraud.
- § 3. — In general.
- § 4. — Intent.
- § 4½. — Deceptive statements or acts.
- § 5. Elements of constructive fraud.
- § 6. — In general.
- § 7. — Fiduciary or confidential relations.
- § 8. Fraudulent representations.
- § 9. — Nature in general.
- § 10. — Matters of fact or of law.

\*Annotation: Words and Phrases, same title.



**I. Deception Constituting Fraud, and Liability Therefor—Continued.**

- § 11. — Matters of fact or of opinion.
- § 12. — Existing facts or expectations or promises.
- § 13. — Falsity and knowledge thereof.
- § 14. Fraudulent warranties.
- § 15. Fraudulent concealment.
- § 16. — Nature in general.
- § 17. — Duty to disclose facts.
- § 18. Materiality of matter represented or concealed.
- § 19. Reliance on representations and inducement to act.
- § 20. — In general.
- § 21. — Persons who may rely on representations.
- § 22. — Duty to investigate.
- § 23. — Relations and means of knowledge of parties.
- § 24. Acts induced by fraud.
- § 25. Injury from fraud.
- § 26. Interest of or benefit to defendant.
- § 27. Fraudulent representations or concealment as to particular facts.
- § 28. Fraud in particular transactions or for particular purposes.
- § 29. Persons entitled to sue.
- § 30. Persons liable.

**II. Actions.****(A) RIGHTS OF ACTION AND DEFENSES.**

- § 31. Nature and form of remedy.
- § 32. Effect of existence of remedy by action on contract.
- § 33. Grounds of action.
- § 34. Conditions precedent.
- § 35. Waiver of right of action.
- § 36. Defenses.
- § 37. Jurisdiction and venue.
- § 38. Time to sue and limitations.

**(B) PARTIES AND PLEADING.**

- § 39. Parties.
- § 40. Pleading.
- § 41. — Allegations of fraud in general.
- § 42. — Intent.
- § 43. — Statements, acts, or conduct constituting fraud.
- § 44. — Contract, transaction, or circumstances connected with fraud.
- § 45. — Falsity of representations and knowledge thereof.
- § 46. — Reliance and inducement and action thereon.
- § 47. — Damage from fraud.
- § 48. — Matters of defense.
- § 49. — Issues, proof, and variance.

**(C) EVIDENCE.**

- § 50. Presumptions and burden of proof.
- § 51. Admissibility.
- § 52. — In general.
- § 53. — Falsity of representations.

**II. Actions—Continued.****(C) EVIDENCE—Continued.**

- § 54. — Intent and knowledge.
- § 55. — Nature and circumstances of fraud.
- § 56. — Reliance on representations and inducement to act.
- § 57. — Damages.
- § 58. Weight and sufficiency.

**(D) DAMAGES.**

- § 59. Measure in general.
- § 60. Elements of compensation.
- § 61. Exemplary.
- § 62. Amount awarded.

**(E) TRIAL, JUDGMENT, AND REVIEW.**

- § 63. Mode and conduct of trial in general.
- § 64. Questions for jury.
- § 65. Instructions.
- § 66. Verdict and findings.
- § 67. Judgment.

**III. Criminal Responsibility.**

- § 68. Offenses.
- § 69. Prosecution and punishment.

*Cross-References.*

See "False Pretenses"; "Forgery."  
 Admissions to show fraud, see "Evidence," § 222.  
 Affecting computation of time for redemption from mortgage foreclosure, see "Mortgages," § 599.  
 Affecting creditor's right to prove claim in bankruptcy, see "Bankruptcy," § 312.  
 Affecting right to mechanic's lien, see "Mechanics' Liens," § 106.  
 Affecting right to specific performance of contract, see "Specific Performance," § 53.  
 Affecting right to subrogation, see "Subrogation."  
 Affecting waiver of mechanic's lien, see "Mechanics' Liens," §§ 207, 212.  
 Allegations as to, in indictment for violation of regulations relating to articles of food, see "Food," § 20.  
 Application of statute of frauds to fraudulent representations, see "Frauds, Statute of," § 42.  
 As criminal act precluding civil remedy, see "Action," § 5.  
 As disqualifying legatee, see "Wills," § 710.  
 Collusive or fraudulent prosecution as bar to subsequent prosecution, see "Criminal Law," § 169.  
 Competency of testimony as to intent, motive, or condition of mind, see "Evidence," § 151.  
 Conspiracy to defraud, see "Conspiracy," §§ 9, 32, 33.  
 Constructive trust arising from fraud in acquisition of property in general, see "Trusts," §§ 94½, 95.

Constructive trust arising from fraud in procuring devise or bequest, see "Trusts," § 97.  
 Contracts inducing fraud or breach of trust, see "Contracts," § 113.  
 Conveyances and transactions fraudulent as to creditors, see "Fraudulent Conveyances."  
 Cross-examination of party charged with fraud, see "Witnesses," § 275.  
 Definition in giving instructions, see "Criminal Law," § 800.  
 Discharge of bankrupt, effect on debts created by fraud, see "Bankruptcy," § 426.  
 Discharge of bankrupt, effect on judgment for fraud, see "Bankruptcy," § 423.  
 Evidence of similar facts and transactions to show fraud, see "Evidence," § 135.  
 Fraud orders issued by post master general, see "Post Office," § 26.  
 Fraudulent acts as affecting credibility as witness, see "Witnesses," § 344.  
 Fraudulent or fictitious claims, effect on jurisdictional amount, see "Courts," § 121.  
 Imputation of fraud as libel or slander, see "Libel and Slander," § 6.  
 Liability of telegraph company for transmitting fraudulent message, see "Telegraphs and Telephones," § 41.  
 Limitation of actions for relief on ground of fraud, see "Limitation of Actions," §§ 37, 99, 100.  
 Of adverse party, excuse for laches, see "Equity," § 80.

Offenses involving fraud, see "Adulteration"; "Counterfeiting"; "Embezzlement"; "False Personation"; "False Pretenses"; "Forgery"; "Fraudulent Conveyances," §§ 329-331.

Offenses involving fraud, counterfeiting, or imitating trade-marks or labels, see "Trade-Marks and Trade-Names," § 48.

Offenses involving fraud, fraudulent registration, see "Elections," § 312.

Offenses involving fraud, fraudulent voting, see "Elections," § 318.

Offenses involving fraud, making false tax list, see "Taxation," § 335½.

Offenses involving fraud, making or presenting false claim against United States, see "United States," §§ 120-123.

Offenses involving fraud, obtaining mail matter by fraud, see "Post Office," § 44.

Offenses involving fraud, procuring money under contract for labor, see "Master and Servant," § 67.

Offenses involving fraud, procuring sexual intercourse, see "Rape," § 10.

Offenses involving fraud, receiving deposits after insolvency of bank, see "Banks and Banking," §§ 83-85.

Offenses involving fraud, trick or device as element of larceny, see "Larceny," § 14.

Offenses involving fraud, use of false weights or measures, see "Weights and Measures," § 10.

Offenses involving fraud, use of mails to defraud, see "Post Office," § 35.

Of plaintiff as defense to action for infringement of trade-mark or for unfair competition, see "Trade-Marks and Trade-Names," § 85.

Of plaintiff subsequent to contract preventing enforcement of specific performance, see "Specific Performance," § 89.

Parol or extrinsic evidence to show fraud, see "Evidence," § 434.

Refusal to give clearance papers to discharged servant as false representation, see "Master and Servant," § 33.

Right of person obtaining goods by fraud to equitable lien for expenditures, see "Liens," § 7.

Service of attachment procured by fraud, see "Appearance," § 24.

Subject and title of acts, see "Statutes," § 118.

Title of trustee in bankruptcy to property fraudulently obtained by bankrupt, see "Bankruptcy," § 140.

*By particular classes of persons, or in particular relations.*

See "Brokers," §§ 34, 65, 102; "Building and Loan Associations," § 8; "Corporations," §§ 495, 550; "Executors and Administrators," §§ 35, 116; "Factors," § 38; "Husband and Wife," §§ 29, 34, 278; "Principal and Agent," §§ 71, 158; "Receivers," § 104.

Agent, see "Principal and Agent," §§ 181, 183.

Assignees for benefit of creditors, see "Assignments for Benefit of Creditors," § 259.

Assignees or trustees in insolvency, see "Insolvency," § 85.

Assignor, as affecting property passing under assignment, see "Assignments for Benefit of Creditors," § 176.

Attorney, see "Attorney and Client," § 114.

Attorneys, as ground for disbarment, see "Attorney and Client," §§ 40-42.

Attorneys in respect to dealings with third persons, see "Attorney and Client," § 26.

Bankrupts, as affecting right to exemptions, see "Bankruptcy," § 399.

Bidders at tax sale, see "Taxation," § 677.

Corporate officers and agents, as against corporation or shareholders, see "Corporations," § 317.

Corporate officers and agents, as against creditors of corporation, see "Corporations," § 335.

Corporate officers and agents in general, see "Corporations," § 422.

Co-tenants, see "Tenancy in Common," § 53.

County officers in sale of county property, see "Counties," § 110.

Debtors, see "Compositions with Creditors," § 11.

Directors of national banks, see "Banks and Banking," § 253.

Executor, as affecting right to maintain action, see "Executors and Administrators," § 432.

Husband, as against wife in conveyance of property, see "Husband and Wife," § 6.

Infant, see "Infants," § 62.

Infant, as to age as affecting liability on contract, see "Infants," § 56.

Insurance agents, see "Insurance," § 380.

Locators of mining claims, see "Mines and Minerals," §§ 19, 25.

Partners, see "Partnership," §§ 98, 153, 154.

Purchasers at tax sales, causing failure to redeem, see "Taxation," § 719.

Purchasers of goods, see "Sales," §§ 43-47.

Purchasers of land, see "Vendor and Purchaser," § 38.

Sellers of goods, see "Sales," §§ 38-41.

Servant, as ground for discharge, see "Master and Servant," § 30.

Stockholders of mining corporation, see "Mines and Minerals," § 104.

Town officers in procuring marriage to effect change of settlement of pauper, see "Paupers," § 21.

Trustee, see "Trusts," § 232.

Vendors of land, see "Vendor and Purchaser," §§ 33-37.

*In particular classes of conveyances, contracts, transactions, or proceedings.*

See "Accord and Satisfaction," §§ 3, 20, 22; "Assignments," § 64; "Assignments for Benefit of Creditors," §§ 140-162; "Bills and Notes," §§ 103, 373; "Bonds," § 40; "Chattel Mortgages," § 72; "Compositions with Creditors," § 11; "Compromise and Settlement," § 8; "Contracts," § 94; "Deeds," § 70; "Exchange of Property," § 3; "Gifts," § 38; "Guaranty," § 20; "Insurance," §§ 187, 262, 380, 553; "Judgment," §§ 373-376, 443, 511, 513, 820; "Marriage," § 34; "Mortgages," §§ 78, 184; "Principal and Surety," §§ 41, 42; "Release," § 17; "Sales," §§ 38-41, 43-47;

- "Subscriptions," § 8; "Vendor and Purchaser," §§ 33-38; "Wills," § 153.
- Acceptance of performance of municipal contract, see "Municipal Corporations," § 365.
- Allowance to widow and children, see "Executors and Administrators," § 200.
- Approval or certificate of architects, arbitrators or others, of performance of contract, see "Contracts," § 292; "Municipal Corporations," § 358.
- Assessment of property for taxation, see "Taxation," § 347.
- Assignment for benefit of corporate creditors, see "Corporations," § 550.
- Assignment of bid made at administrator's sale, see "Executors and Administrators," § 395.
- Assignment of mining lease, see "Mines and Minerals," § 74.
- Auction sale, see "Auctions and Auctioneers," § 7.
- Award of arbitrators, see "Arbitration and Award," § 64.
- Between heirs and distributees, see "Descent and Distribution," § 82.
- Bill of lading, see "Carriers," § 49.
- Bond of administrator to secure payment of debt of decedent, see "Executors and Administrators," § 433.
- Carriage of goods, affecting lien of carrier for charges, see "Carriers," § 197.
- Change of names, see "Names," § 20.
- Compromise of claims against decedent's estate, see "Executors and Administrators," § 269.
- Confession of judgment, see "Judgment," § 68.
- Contract for carriage of goods, see "Carriers," § 110.
- Contract for construction of bridge, see "Bridges," § 20.
- Contracts affecting mechanic's lien, see "Mechanics' Liens," §§ 164, 184.
- Contracts by cities, see "Municipal Corporations," § 255.
- Conveyance by legatee, see "Wills," § 742.
- Conveyance or mortgage of homestead, see "Homestead," § 118.
- Discount of forged or fraudulent paper by bank, see "Banks and Banking," § 186.
- Disposal of materials to defeat mechanic's lien, see "Mechanics' Liens," § 52.
- Election under will, see "Wills," § 797.
- Employment, see "Master and Servant," §§ 7, 30.
- Employment of insurance agent, see "Insurance," § 93.
- Employment of teacher, see "Schools and School Districts," § 135.
- Enactment of ordinances, see "Municipal Corporations," § 111.
- Entry of satisfaction of judgment, see "Judgment," § 898.
- Entry on public lands, see "Public Lands," § 30.
- Exchange of real property, see "Exchange of Property," § 3.
- False marking or branding of animals, see "Animals," § 12.
- Family settlements, see "Descent and Distribution," § 82.
- Foreign divorces, see "Divorce," § 329.
- Indorsement of bill or note, see "Bills and Notes," §§ 239, 279, 381.
- Issuance of municipal bonds, rights of bona fide purchasers, see "Municipal Corporations," § 948.
- Issue of certificates of corporate stock, see "Corporations," § 101.
- Lease, see "Landlord and Tenant," § 28.
- Lease of street railroad, see "Street Railroads," § 49.
- Liability of acceptor of bill of exchange fraudulently diverted, see "Bills and Notes," § 76.
- Making mechanic's lien claim or statement, see "Mechanics' Liens," § 157.
- Marriage, penalty for abandonment of wife, see "Husband and Wife," § 305½.
- Marriage settlement, see "Husband and Wife," §§ 29, 34.
- Measurement or scaling of logs or timber, see "Logs and Logging," § 10.
- Mining leases or licenses, see "Mines and Minerals," § 58.
- Naturalization, see "Aliens," § 71.
- New promise within statute of limitations, see "Limitation of Actions," § 146.
- Notice of fraud in conveyance affecting subsequent purchasers, see "Vendor and Purchaser," § 229.
- Notice of proceedings to obtain confirmation of tax title, see "Taxation," § 816.
- Obtaining judgment, effect as bar of other action, see "Judgment," § 576.
- Obtaining pension, see "Pensions," § 13.
- Partnership agreements, see "Partnership," § 25.
- Patent to public lands, see "Public Lands," §§ 120-122.
- Payment of forged or altered paper by bank, see "Banks and Banking," §§ 147-149.
- Performance of contract as estopping contractor to recover on contract, see "Contracts," § 320.
- Preventing revocation of will, see "Wills," § 177.
- Proceedings before United States land department, see "Public Lands," § 106.
- Procuring marriage to effect change of settlement of pauper, see "Paupers," § 21.
- Procuring money under contract for labor with intent to defraud, see "Master and Servant," § 67.
- Procuring pardon, see "Pardon," § 8.
- Procuring service of process, see "Process," § 65.
- Registration of voters, see "Elections," § 312.
- Release by creditors on distribution of assets assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 326.
- Release of mortgage, see "Mortgages," §§ 309, 316.
- Sale and conveyance of state lands, see "Public Lands," § 177.
- Sale, distinction between warranty and fraud, see "Sales," § 251.
- Sale of mineral lands, see "Mines and Minerals," § 54.
- Sale of property of descendant, see "Executors and Administrators," § 372.

Sale under mortgage or trust deed, see "Mortgages," § 369.  
 Separation agreements, see "Husband and Wife," § 278.  
 Settlement between partners, see "Partnership," § 311.  
 Subscriptions to corporate stock, see "Corporations," § 80.  
 Substitution of new debtor, see "Novation," § 4.  
 Suppression of patent, see "Patents," § 122.  
 Testing or working mines, see "Mines and Minerals," § 109.  
 Transfer of insurance policy, see "Insurance," § 216.  
 Use of packages, bottle wrappers, or labels as constituting unfair competition, see "Trade-Marks and Trade-Names," § 72.  
 Use of trade-mark or trade-names, see "Trade-Marks and Trade-Names," § 22.

*Particular remedies.*

See "Account," § 7; "Arrest," § 15; "Attachment," §§ 32, 40-45; "Cancellation of Instruments," § 37; "Money Received," § 8; "Ne Exeat," §§ 3, 6; "New Trial," §§ 28-32; "Reformation of Instruments," §§ 20, 21; "Trover and Conversion," § 9.  
 Annulment of patent, see "Patents," § 128.  
 Appointment of receiver, see "Receivers," § 13.  
 Arrest and imprisonment of judgment debtor on affidavit that the debt was contracted through fraud as deprivation of liberty or property without due process of law, see "Constitutional Law," § 306.  
 Cancellation of patent to public lands, see "Public Lands," §§ 120-122.  
 Collateral attack on bankrupt's discharge, see "Bankruptcy," § 419.  
 Collateral attack on judgment, see "Judgment," §§ 511, 513.  
 Debts created by fraud as claims provable against bankrupt's estate, see "Bankruptcy," § 318.  
 Defense as against bona fide purchaser of bill or note, see "Bills and Notes," §§ 373, 452, 497.  
 Defense in trespass, see "Trespass," § 27.  
 Defense to action on judgment, see "Judgment," § 906.  
 Defense to action on note, see "Bills and Notes," § 452.  
 Defense to ejectment, see "Ejectment," § 26.  
 Dissolving injunction, see "Injunction," § 163.

Equitable defense in action at law, see "Action," § 24.  
 Equitable relief against judgment, see "Judgment," §§ 416, 430, 443, 445.  
 Equitable relief in general, see "Equity," §§ 10-14.  
 Fraudulent diversion of bill or note as defense against bona fide purchaser, see "Bills and Notes," § 380.  
 Ground for divorce, see "Divorce," § 18.  
 Interposition of defense in court of law, see "Action," § 12.  
 New trial in proceedings relating to probate and contest of wills, see "Wills," § 337.  
 Opening or vacating accounting of executor or administrator on ground of fraud, see "Executors and Administrators," § 509.  
 Opening or vacating judgment, see "Judgment," §§ 138, 141, 160, 162, 373-376.  
 Recoupment by tenant in action for rent of damages resulting from fraud of landlord, see "Landlord and Tenant," § 223.  
 Recovery of payments induced by fraud, see "Payment," § 86.  
 Reference in actions involving fraud, see "Reference," § 7.  
 Reformation of insurance policy, see "Insurance," § 143.  
 Relief to claimant of public land, see "Public Lands," § 126.  
 Rescission of contract, see "Contracts," § 270.  
 Rescission of contract by act of party, see "Contracts," § 259.  
 Rescission of contract for public improvements, see "Municipal Corporations," § 354.  
 Rescission of contract of sale, see "Sales," § 114; "Vendor and Purchaser," §§ 90, 108.  
 Rescission of sale of note, see "Bills and Notes," § 216.  
 Restoration of lien released through fraud, see "Liens," § 16.  
 Restraining assessment for taxation, see "Taxation," § 498.  
 Setting aside assessment for taxation, see "Taxation," § 500.  
 Setting aside foreclosure sale, see "Mortgages," § 529.  
 Vacating bankrupt's discharge, see "Bankruptcy," § 417.  
 Vacating discharge of insolvent, see "Insolvency," § 154.  
 Vacation of municipal assessment, see "Municipal Corporations," § 513.  
 Vacation of probate of will, see "Wills," § 355.

## I. DECEPTION CONSTITUTING FRAUD, AND LIABILITY THEREFOR.

### § 1. Nature of fraud.

#### *Cross-Reference.*

Elements of fraud, see post, §§ 2-7, 13, 16.  
 (a) Fraud is not to be considered as a single fact, but as a conclusion to be drawn from all the circumstances of the case.—*Brogden v. Walker*, 2 H. & J. 285.

### § 2. Elements of actual fraud.

#### *Cross-Reference.*

See ante, § 1.

### § 3.—In general.

#### *Annotation.*

Statement of opinion generally not fraudulent.—35 L. R. A. 417, note.

### § 4.—Intent.

#### *Cross-References.*

Evidence, see post, §§ 50, 54, 58.

Instructions, see post, § 65.  
 Nature of fraud, see ante, § 1.  
 Pleading, see post, § 42.  
 Questions for jury, see post, § 64.

(a) Fraudulent intent is a necessary element in every actionable fraud.—*Lamm v. Port Deposit Homestead Ass'n*, 49 Md. 233, 33 Am. Rep. 246. [Cited and annotated in 50 L. R. A. 647, on liability of servant or agent for conversion, trespass, or other positive tort against third parties under orders.]

#### § 4½.— Deceptive statements or acts.

##### Cross-References.

Pleading, see post, § 43.  
 Proof, see post, § 55.

#### § 5-7. Elements of constructive fraud.

##### Cross-Reference.

Officers or agents of corporation and corporation or shareholders, see "Corporations," § 317.

#### § 8. Fraudulent representations.

##### Cross-Reference.

Evidence, see post, § 58.

#### § 9.— Nature in general.

##### Cross-References.

Acts induced, see post, § 24.  
 Particular facts, see post, § 27.  
 Particular purposes, see post, § 28.

(a) To sustain an action for deceit, it must be established that the representations complained of were false; that they were relative to matters material to the transaction, and not solely to promises as to matters in futuro; that the defendant, in making the representations, knew them to be false; and that the plaintiff, exercising ordinary prudence, relied on them as true, to his injury.—*Boulden v. Stilwell*, 100 Md. 543, 60 Atl. 609, 1 L. R. A. (N. S.) 258.

#### § 10.— Matters of fact or of law.

#### § 11.— Matters of fact or of opinion.

##### Cross-References.

See "Master and Servant," § 30.  
 Instructions, see post, § 65.  
 Questions for jury, see post, § 64.

##### Annotation.

False statement as to cost, selling, or market price of property, or as to offers therefor.—35 L. R. A. (N. S.) 175, note.  
 Misstatement as to title to real property sold, as matter of opinion.—28 L. R. A. (N. S.) 206; 39 L. R. A. (N. S.) 1143, notes.

What statements are fact and what opinion.—35 L. R. A. 435, note.

(a) In an action for deceit in the sale of street railway bonds, evidence of misrepresentation

as to the population and extent of the business of the city in which the railway was located, which were mere matters of opinion, derived from journals and other estimates, were insufficient to sustain a verdict for plaintiffs.—*Donnelly v. Baltimore Trust & Guarantee Co.*, 102 Md. 1, 61 Atl. 301. [Cited and annotated in 49 L. R. A. (N. S.) 1220, on fraud: some American views of *Derry v. Peek*.]

#### § 12.— Existing facts or expectations or promises.

##### Annotation.

May fraud be predicated of misstatement as to title to real property.—28 L. R. A. (N. S.) 202; 39 L. R. A. (N. S.) 1142, notes.

Future promise as fraud.—10 L. R. A. (N. S.) 640; 24 L. R. A. (N. S.) 735, notes.

Statements regarding future as a fraud.—35 L. R. A. 420, 437, note.

(a) A person who purchased a slave at less than its value, and agreed, at the time of the sale, not to sell her out of the state, but afterwards sold her out of the state, was guilty of fraud, and was liable in damages therefor to the original owner of the slave.—*Price v. Read*, 2 H. & G. 291. [Cited and annotated in 10 L. R. A. (N. S.) 647, on future promise as fraud.]

#### § 13.— Falsity and knowledge thereof.

##### Cross-References.

Evidence, see post, §§ 53, 54, 58.  
 Instructions, see post, § 65.  
 Pleading, see post, § 45.  
 Questions for jury, see post, § 64.

##### Annotation.

Some American views of the case of *Derry v. Peek*.—49 L. R. A. (N. S.) 1219, note.

Statements made without knowledge of falsity as ground for action for fraud.—18 L. R. A. (N. S.) 379, note.

(a) Where defendant trust company, in issuing a prospectus for the sale of bonds of a consolidated railway company, acted on the advice of its reputable attorneys in stating that the railway company's charter was perpetual, and at the time such statement was made a court of the state in which the company was organized had so held, and the litigation then appeared to be finished, such statement was not shown to be false, so as to sustain an action of deceit by the fact that the Supreme Court of such state subsequently passed a decree holding the consolidation void for other reasons, which litigation

tion was subsequently settled favorably to the corporation, without determining that its franchise was not perpetual.—*Donnelly v. Baltimore Trust & Guarantee Co.*, 102 Md. 1, 61 Atl. 301. [Cited and annotated, see *supra*, § 11.]

(b) A statement in a prospectus for the sale of bonds of a consolidated railway company that its present total mileage was 66.2 miles was not fraudulent by reason of the fact that such mileage was obtained by counting each mile of double track as two miles, in accordance with recognized custom.—*Donnelly v. Baltimore Trust & Guarantee Co.*, 102 Md. 1, 61 Atl. 301. [Cited and annotated, see *supra*, § 11.]

(c) A misrepresentation, believed by the speaker to be true, though induced by his ignorance or negligence, will not sustain an action for deceit, but there must be either knowledge of the falsity of the representation, or such reckless indifference as is equivalent to actual knowledge.—*Boulden v. Stilwell*, 100 Md. 543, 60 Atl. 609, 1 L. R. A. (N. S.) 258.

(d) In an action of deceit for misrepresenting the actual condition of a bank, thereby inducing the purchase of its stock, it is error to instruct that representations of a character to sustain the action would be such as were known to defendant, the bank's president, to be false, or by the exercise or ordinary care ought, in the jury's judgment, to have been known by him to be false, since the gist of the action is fraud, and not negligence.—*Cahill v. Applegarth*, 98 Md. 493, 56 Atl. 794. [Cited and annotated in 1 L. R. A. (N. S.) 258, on corporate officer's liability for misrepresentations inducing sale or purchase of stock.]

#### § 14. Fraudulent warranties.

#### § 15-17. Fraudulent concealment.

##### Annotation.

May fraud be predicated of concealment of defects in title to real property.—28 L. R. A. (N. S.) 207, note.

Concealment of facts by insured in case of Lloyd's policies as fraud.—55 L. R. A. 202, note.

Landlord's concealment of defects in premises as fraud.—34 L. R. A. 827, note.

Obligee's concealment of facts on obtaining guaranty or surety as fraud.—21 L. R. A. 411, note.

(a) Misrepresentation may consist as well

in the concealment of what is true as in the assertion of what is false.—*Johnston v. Cope*, 3 H. & J. 89, 5 Am. Dec. 423.

#### § 18. Materiality of matter represented or concealed.

##### Cross-References.

Evidence, see post, § 55.

Instructions, see post, § 65.

Questions for jury, see post, § 64.

(a) Where there is no positive standard by which to determine whether the fraud connected with a transaction is material and amounts to cognizable fraud, so as to render the person guilty of it liable to the person injured, no better rule can be given for deciding the question than this: If the fraud be such that, had it not been practiced, the contract could not have been made or the transaction completed, then it is material; but, if it be shown or made probable that the same thing would have been done in the same way if the fraud had not been practiced, it cannot be deemed material.—*McAleer v. Horsey*, 35 Md. 439. [Cited and annotated in 35 L. R. A. 428, on expression of opinion as fraud; in 1 L. R. A. (N. S.) 258, 260, on corporate officer's liability for misrepresentations inducing sale or purchase of stock.]

#### § 19. Reliance on representations and inducement to act.

##### Cross-References.

See post, § 26.

Evidence, see post, §§ 56, 58.

Instructions, see post, § 65.

Pleading, see post, § 46.

Questions for jury, see post, § 64.

#### § 20.— In general.

##### Annotation.

Purchaser's right to rely on representations as to title to real property.—39 L. R. A. (N. S.) 1143, note.

Right to rely on representations as to credit of third person.—37 L. R. A. 607, note.

Right of purchaser of personalty to rely on seller's computation of price or estimate of quantity.—17 L. R. A. (N. S.) 419, note.

Right of purchaser of land to rely upon representations of seller as to boundaries.—14 L. R. A. (N. S.) 1210, note.

(a) In an action for false representations inducing credit, it is not necessary to show that the representations were the sole cause of the credit being given.—*Cook v. Gill*, 83 Md. 177, 34 Atl. 248.

## § 21.— Persons who may rely on representations.

### Cross-Reference.

See post, § 22.

### Annotation.

Right to rely on representations.—37 L. R. A. 593, note.

## § 22.— Duty to investigate.

### Annotation.

Duty of purchaser of corporate stock to verify statements made as to financial condition of corporation.—14 L. R. A. (N. S.) 1176, note.

(a) In an action for deceit in the sale of shares of stock to plaintiff, who was in the employ of the company issuing the stock, and had ample opportunity to ascertain its value at the time of his purchase, but failed to inquire, he will be deemed to have had notice of the true value of the stock.—*Weaver v. Shriver*, 79 Md. 530, 30 Atl. 189. [Cited and annotated in 1 L. R. A. (N. S.) 259, 260, on corporate officer's liability for misrepresentations inducing sale or purchase of stock; in 14 L. R. A. (N. S.) 1180, on duty of purchaser of stock to verify statements as to corporate condition; in 43 L. R. A. (N. S.) 375, on measure of damages for misrepresenting value of stock sold.]

(b) The rule of caveat emptor gives no protection to a party rendering himself liable to an action for fraud and deceit perpetrated in making a sale.—*Lamm v. Port Deposit Homestead Ass'n*, 49 Md. 233, 33 Am. Rep. 246. [Cited and annotated in 50 L. R. A. 647, on liability of servant or agent for conversion, trespass, or other positive tort against third parties under orders.]

## § 23.— Relations and means of knowledge of parties.

### Cross-Reference.

See ante, §§ 21, 22.

## § 24. Acts induced by fraud.

### Cross-References.

See ante, § 9.

Fraudulent representations or concealment as to particular facts, see post, § 27.

## § 25. Injury from fraud.

### Cross-Reference.

Pleading damage, see post, § 47.

(a) Where the shares of an electric light and power company were held for the benefit of a consolidated railway company by trustees of the railway company's selection

under an express agreement on the part of such trustees to pay over to the railway company "all dividends and money that may be received by them from or on account of said stock" bondholders of the railway company purchasing on the faith of a circular stating that the railway company was the sole owner of the capital stock of the light and power company, and that all the shares of the company were deposited with the trustee as additional security for the bond issue, were not injured by the technical false statement as to the ownership of the stock.—*Donnelly v. Baltimore Trust & Guarantee Co.*, 102 Md. 1, 61 Atl. 301. [Cited and annotated in 49 L. R. A. (N. S.) 1220, on fraud: some American views of *Derry v. Peek*.]

## § 26. Interest of or benefit to defendant.

## § 27. Fraudulent representations or concealment as to particular facts.

### Cross-References.

Nature of representations in general, see ante, § 9.

Particular transactions, see post, § 28.

## § 28. Fraud in particular transactions or for particular purposes.

### Cross-References.

Acts induced by fraud, see ante, § 24.

Nature of representations in general, see ante, § 9.

(a) Plaintiff, who owned stock in a corporation, and was employed by it as its secretary, was told by the president that he was going to sell out his stock to the vice-president, as the company was going to "fall down," and the president handed plaintiff a letter, informing him of such fact, and the vice-president told plaintiff that he was going to buy the president's stock, as the business was not productive enough to pay three salaried officers. The books were in such a condition that plaintiff could not tell at that time what the condition of the company was, and he sold his stock to the vice-president. The president also told plaintiff that the vice-president would vote plaintiff out of his office. *Held*, in an action by plaintiff against the two officers for damages from false and fraudulent representations inducing him to sell the stock, that there were no representation on which the action could be based.—*Boulden v. Stilwell*, 100 Md. 543, 60 Atl. 609, 1 L. R. A. (N. S.) 258.



**§ 29. Persons entitled to sue.***Cross-References.*

See "Husband and Wife," § 210.  
 Instructions, see post, § 65.  
 Parties plaintiff, see post, § 39.  
 Assignee, see "Assignments," § 94.  
 Husband or wife or both, see "Husband and Wife," § 209.  
 Right of action by promoters of corporation, see "Corporations," § 30.  
 Rights of continuing partner, see "Partnership," § 233.  
 Succession of corporation to rights of promoters, see "Corporations," § 30.

**§ 30. Persons liable.***Cross-References.*

Evidence, see post, §§ 52, 58.  
 Instructions, see post, § 65.  
 Interest of or benefit to defendant, see ante, § 26.  
 Parties defendant, see post, § 39.  
 Questions for jury, see post, § 64.  
 Agent of corporation, see "Corporations," § 306.  
 Conspiracy to defraud, see "Conspiracy," §§ 13, 14.  
 Corporation for acts of officers, see "Corporations," § 422.  
 Fraud in contract as affecting assignee, see "Assignments," § 100.  
 Husband or wife or both, see "Husband and Wife," § 214.  
 Married women, see "Husband and Wife," § 174.  
 Operation of statute of frauds, see "Frauds, Statute of," § 38.

**II. ACTIONS.***Cross-Reference.*

Joinder of causes of action, see "Action," §§ 38-60.

**(A) RIGHTS OF ACTION AND DEFENSES.***Cross-References.*

Assignability of right of action for fraud, see "Assignments," § 24.  
 By husband and wife, see "Husband and Wife," § 207.  
 Election of other remedy, see "Election of Remedies," § 3.  
 Survival on death of party, see "Abatement and Revival," § 55.

**§ 31. Nature and form of remedy.***Cross-References.*

Affecting jurisdiction of justice of the peace, see "Justices of the Peace," § 34.  
 Contract or tort, see "Action," §§ 27, 28.

**§ 32. Effect of existence of remedy by action on contract.****§ 33. Grounds of action.****§ 34. Conditions precedent.**

(a) Plaintiff's right of action for false representations in making a sale to him of shares of stock is not affected by his failure

to pay the full consideration provided in the contract of sale.—*Weaver v. Shriver*, 79 Md. 530, 30 Atl. 189. [Cited and annotated in 1 L. R. A. (N. S.) 259, 260, on corporate officer's liability for misrepresentations inducing sale or purchase of stock; in 14 L. R. A. (N. S.) 1180, on duty of purchaser of stock to verify statements as to corporate condition; in 43 L. R. A. (N. S.) 375, on measure of damages for misrepresenting value of stock sold.]

**§ 35. Waiver of right of action.***Cross-Reference.*

Instructions, see post, § 65.

**§ 36. Defenses.***Cross-References.*

Pleading matters of defense, see post, § 48.  
 Counterclaim as based on same transaction, see "Set-Off and Counterclaim," § 29.  
 Duty to prevent loss, see "Damages," § 62.

**§ 37. Jurisdiction and venue.***Cross-References.*

Construction of statutes relating to actions in general, see "Venue," § 14.  
 Jurisdiction dependent on amount or value in controversy, see "Courts," § 121.  
 Jurisdiction of cause of action accruing in other state, see "Courts," § 6.  
 Jurisdiction of municipal court, see "Courts," § 188.

**§ 38. Time to sue and limitations.***Cross-References.*

Accrual of right of action, see "Limitation of Actions," §§ 55, 99.  
 Demurrer raising defense, see "Limitation of Actions," § 180.  
 Discovery of fraud, see "Limitation of Actions," § 100.  
 Limitation of actions for equitable relief on ground of fraud, see "Limitation of Actions," § 37.

**(B) PARTIES AND PLEADING.****§ 39. Parties.***Cross-References.*

Persons entitled to sue, see ante, § 29.  
 Persons liable, see ante, § 30.

**§ 40. Pleading.***Cross-References.*

Acts of municipality, see "Municipal Corporations," § 1034.  
 Adverse claim to mining location, see "Mines and Minerals," § 38.  
 Demurrer raising fraud in agreement of accord, see "Accord and Satisfaction," § 25.  
 Fraud in execution of contract, see "Contracts," § 338.  
 Fraud in levy of municipal assessment, see "Municipal Corporations," § 513.  
 In action by taxpayer to annul municipal contract, see "Municipal Corporations," § 1000.

In action for compensation under contract for public improvements, see "Municipal Corporations," § 374.

In action for price of goods, see "Sales," § 354.

In action for recovery of payment, see "Payment," § 89.

In action on improvement certificates, see "Municipal Corporations," § 374.

In action to enforce municipal assessment, see "Municipal Corporations," § 567.

In action to redeem, see "Mortgages," § 616.

In action to restrain collection of tax, see "Taxation," § 611.

In action to review decision of United States land department, see "Public Lands," § 106.

In action to set aside tax deed, see "Taxation," § 809.

In exceptions to bankrupt's claim for exemptions, see "Bankruptcy," § 400.

In indictment for violations of regulations relating to articles of food, see "Food," § 20.

Right to require bill of particulars in action based on fraud, see "Pleading," § 317.

#### § 41.—Allegations of fraud in general.

(a) Fraud must be distinctly alleged and proved to be available.—*American Surety Co. v. Spice*, 119 Md. 1, 85 Atl. 1031.

#### § 42.—Intent.

#### § 43.—Statements, acts, or conduct constituting fraud.

##### *Cross-References.*

See ante, § 41.

Pleading facts or conclusions, see "Pleading," § 8.

#### § 44.—Contract, transaction, or circumstances connected with fraud.

(a) A count which charges the fraudulent procurement from plaintiff, by defendants, of large sums of money, under representation that defendants were legitimate life insurance agents, without charging in what way, when, or how much, money was taken, does not state a ground of action.—*Pearce v. Watkins*, 68 Md. 534, 13 Atl. 376.

#### § 45.—Falsity of representations and knowledge thereof.

#### § 46.—Reliance and inducement and action thereon.

#### § 47.—Damage from fraud.

(a) In an action of deceit, the declaration alleged that plaintiff was induced to exchange her house and lot in town for defendant's farm, subject to a mortgage, by

the false and fraudulent representations of defendant as to when the interest was due on the mortgage, and that because of this plaintiff was unprepared and unable to pay the interest when demanded, and in consequence thereof the farm was sold to pay the mortgage, and plaintiff was deprived of the ownership and possession of her house and lot, and suffered damage thereby. *Held*, that the petition is insufficient, since the damages claimed are for the loss of the house and lot, while the fraud alleged is in reference to the farm.—*Russell v. Stoops*, 106 Md. 138, 66 Atl. 698. [Cited and annotated in 16 L. R. A. (N. S.) 819, on damages for fraudulent representations in sale of realty.]

#### § 48.—Matters of defense.

#### § 49.—Issues, proof, and variance.

(a) In an action of deceit for false representations inducing the purchase of bank stock, it is not necessary to prove the exact language of the misrepresentation, but proof of it in substance and legal effect is sufficient.—*Cahill v. Applegarth*, 98 Md. 493, 56 Atl. 794. [Cited and annotated in 1 L. R. A. (N. S.) 258, on corporate officer's liability for misrepresentations inducing sale or purchase of stock.]

(b) In an action for deceit on the ground that defendant trust company issued and sold to plaintiff certain bonds of a telephone company, falsely representing that they belonged to a series of 600 bonds for \$500 each, and that they were secured by mortgage, where the general issue was pleaded, evidence of an officer of the trust company as to what property the telephone company had at the time of its formation is inadmissible, since not within the issues.—*Bauernschmidt v. Maryland Trust Co.*, 89 Md. 507, 43 Atl. 790.

(c) Under an allegation that plaintiff relied altogether and exclusively on representations made by defendant, proof that he relied mainly and substantially on such allegations does not amount to a variance, and is sufficient to support a recovery, as it proved the substance of the allegation.—*Cook v. Gill*, 83 Md. 177, 34 Atl. 248.

#### (C) EVIDENCE.

#### § 50.—Presumptions and burden of proof.

##### *Cross-References.*

Instructions, see post, § 65.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Burden of proving agency of person committing fraud, see "Principal and Agent," § 20.  
*Annotation.*

Necessity of proving scienter in action for fraud in misrepresentations as to location of property sold.—38 L. R. A. (N. S.) 306, note.

(a) Where fraud is charged in obtaining a contract fair upon its face, the burden of proving the fraud is upon the party charging it.—*Abrahams v. King*, 111 Md. 104, 73 Atl. 694.

## § 51. Admissibility.

### *Cross-References.*

Cross-examination of expert witness, see "Evidence," § 558.

Evidence admissible by reason of admission of similar evidence of adverse party, see "Evidence," § 155.

Res gestæ, see "Evidence," §§ 118-123.

## § 52.— In general.

## § 53.— Falsity of representations.

(a) In an action of deceit for false representations as to the financial condition of a bank, inducing the purchase of its stock, evidence of one who had held stock for four or five years that he never received a dividend, or notice that one was due, is relevant.—*Cahill v. Applegarth*, 98 Md. 493, 56 Atl. 794. [Cited and annotated, see supra, § 49.]

## § 54.— Intent and knowledge.

(a) The acts of the parties toward third persons may be admissible to show the quo animo of the particular transaction, which is charged to be fraudulent and such acts may be proved by the third persons.—*Stouffer v. Alford*, 114 Md. 110, 78 Atl. 387.

## § 55.— Nature and circumstances of fraud.

## § 56.— Reliance on representations and inducement to act.

(a) In an action to recover damages for fraudulent representations, by reason of which the plaintiff claimed to have been induced to purchase a half interest in a business, he testified, on cross-examination, that he had sold such half interest for a house, which was subject to a mortgage of \$1,600, and that it was not worth the mortgage. This house, together with a house belonging to his wife, he subsequently exchanged with

A. for a tract of land. In reply to a question by the defendants, he denied having told A. that he had refused \$2,250 for the house. The defendants then offered to prove by A. that the plaintiff told him that he had refused \$2,250 for the house at public sale. Held, that the evidence offered was admissible.—*Buschman v. Codd*, 52 Md. 202. [Cited and annotated in 35 L. R. A. 439, on expression of opinion as fraud; in 37 L. R. A. 593, on right to rely on representations made to effect contract as basis for charge of fraud.]

## § 57.— Damages.

### *Cross-References.*

Pecuniary condition of person injured, see "Damages," § 171.

(a) In an action for damages from false and fraudulent representations, whereby plaintiff was induced to sell corporate stock to defendant in April, evidence of a sale of such stock by defendant in the following September would not sustain the claim for damages.—*Boulden v. Stilwell*, 100 Md. 543, 60 Atl. 609, 1 L. R. A. (N. S.) 258.

## § 58. Weight and sufficiency.

### *Cross-References.*

Instructions, see post, § 65.

To present question for jury, see post, § 64.

Cancellation of patent to public land, see "Public Lands," §§ 120-122.

In equitable action, see "Equity," § 348.

### *Annotation.*

Degree of certainty necessary to establish fraud in a civil action.—33 L. R. A. (N. S.) 836, note.

(a) Fraud need not be established by direct evidence, but may be shown by consideration of the acts, declarations, and condition of the parties at or about the time of the transaction and the circumstances surrounding it.—*Stouffer v. Alford*, 114 Md. 110, 78 Atl. 387.

(b) Plaintiff's testimony showed that he was induced by defendant to buy stock in a corporation at \$75 per share, on the representations of defendant, who was secretary of the company, that it was a good investment; that \$80 per share was the price everybody paid for it; that he would not sell his own stock; but that the owner of some was indebted on his house, and would sell. The testimony further tended to show that a part of the stock sold plaintiff was at the time owned by defendant, who had bought it for \$30 per share, and the remainder he

bought from the superintendent at \$50 or less, and turned over to plaintiff. Plaintiff testified that he knew nothing about the company before, and relied on the statements made by the defendant, in whom he had confidence. *Held*, that the evidence supported a finding that such representations were fraudulent, and rendered defendant liable for the loss sustained by plaintiff in the transaction.—*Cook v. Gill*, 83 Md. 177, 34 Atl. 248.

(c) In an action of deceit it appeared that plaintiff, the owner of a mill, had mortgaged the property to defendant, and afterwards became involved. Defendant, a friend of plaintiff's family, gave the plaintiff numerous assurances that he would help him out of his difficulties. He advised that the mill be sold by him under the mortgage, and promised that, if plaintiff could obtain releases from his creditors, he would buy in the property at such a price that the plaintiff could afford to hold it, and that, if such releases could not be obtained, the property might be put in the name of one of the plaintiff's family. There was no consideration for an extension given by the defendant, and the property could have been sold by him at any time under the mortgage. Defendant had some intention of going into business with the plaintiff, if the latter could make satisfactory arrangements with his creditors. This, however, plaintiff was unable to do, and the property was sold to a third party for less than plaintiff had paid for it. No objection was made that the sale was not fairly conducted, or that the defendant had not made every effort to have the property sold at its full value. *Held*, insufficient to show the fraud and consequent damages necessary to a recovery.—*Melville v. Gary*, 76 Md. 221, 24 Atl. 604.

#### (D) DAMAGES.

##### *Cross-References.*

- Evidence, see ante, §§ 57, 58.
- Instructions, see post, § 65.
- Duty to prevent loss, see "Damages," § 62.
- Interest as element of damages, see "Damages," § 69.
- Speculative damages, see "Damages," § 18.

#### § 59. Measure in general.

##### *Cross-Reference.*

- Amount awarded, see post, § 62.

##### *Annotation.*

Measure of damages for fraud in the exchange of property.—38 L. R. A. (N. S.) 465, note.

Measure of damages for false representations in sale of real estate.—8 L. R. A. (N. S.) 804; 16 L. R. A. (N. S.) 818, notes.

(a) In an action of deceit for damages resulting to plaintiff because of fraudulent representations made by defendant in regard to the interest due on a mortgage on his farm which he traded to plaintiff subject to the mortgage, and because of which plaintiff could not pay the interest so that the farm was sold under the mortgage, where it was not alleged or attempted to be proven that the defendant made the false representations in order to mislead the plaintiff, and thereby cause a default in the entire mortgage so that the property would be sold and he might purchase it, as he did, at a sacrifice, it was error to charge that plaintiff was entitled to recover such damages as she had sustained as the direct consequence of the false representations, providing she could not have prevented the loss by the exercise of ordinary care and prudence, since this allowed her to recover special damages resulting from the sale of the farm, a circumstance which could not reasonably be supposed, according to the usual course of business, to flow from defendant's act.—*Russell v. Stoops*, 106 Md. 138, 66 Atl. 698. [Cited and annotated in 16 L. R. A. (N. S.) 819, on damages for fraudulent representations in sale of realty.]

(b) Under these circumstances, plaintiff ought to have been limited in her recovery to the interest on the mortgage which she became obligated to pay and which defendant represented was not due.—*Russell v. Stoops*, 106 Md. 138, 66 Atl. 698. [Cited and annotated, see supra.]

(c) In an action for false representations in the sale of shares of stock, if it appears that there were false representations, and the stock was paid for partly in cash and partly in secured notes, the vendee may recover the value of the collateral security deposited with defendant.—*Weaver v. Shriver*, 79 Md. 530, 30 Atl. 189. [Cited and annotated in 1 L. R. A. (N. S.) 259, 260, on corporate officer's liability for misrepresentations inducing sale or purchase of stock; in

14 L. R. A. (N. S.) 1180, on duty of purchaser of stock to verify statements as to corporate condition; in 43 L. R. A. (N. S.) 375, on measure of damages for misrepresenting value of stock sold.]

(d) Where one purchased stock, and paid one-half the par value, giving notes for the other half, the measure of damages in an action for deceit in representing the stock to be at par, when in reality it was 50 per cent. below par, is not the amount paid in cash, but the amount of damage which plaintiff has sustained as the direct consequence of the false representation.—*Weaver v. Shriver*, 79 Md. 530, 30 Atl. 189. [Cited and annotated, see supra.]

(e) In an action for false representations in the sale of an interest in a business firm, the measure of damages is such loss as may have been the direct result of such representations, not to exceed the contract price.—*Buschman v. Codd*, 52 Md. 202. [Cited and annotated in 35 L. R. A. 439, on expression of opinion as fraud; in 37 L. R. A. 593, on right to rely on representations made to effect contract as basis for charge of fraud; in 28 L. R. A. (N. S.) 50, on interest on unliquidated damages.]

(f) R., who was part owner of a vessel, and who was authorized to appoint her master, agreed to appoint P. in consideration that he would take an eighth interest in the vessel at the cost price thereof, falsely representing the cost price to have been \$34,000, when in fact it was only \$25,500, which was well known to R. at the time. P. accordingly paid one-eighth of the cost price as falsely represented. Held, that P. was entitled to recover from R. the overpayment, although the actual value of the interest was equal to what such false representation induced him to pay for it; and that the measure of damages would be the difference between one-eighth of the actual, and one-eighth of the represented, cost.—*Pendergast v. Reed*, 29 Md. 398, 96 Am. Dec. 539. [Cited and annotated in 35 L. R. A. (N. S.) 183, on fraud: false statement as to cost, selling or market price of property or as to offers.]

#### § 60. Elements of compensation.

(a) In an action for false and fraudulent representations, whereby plaintiff was induced to sell corporate stock to defendants, plaintiff could not recover for future contingent profits on the stock.—*Boulden v.*

*Stilwell*, 100 Md. 543, 60 Atl. 609, 1 L. R. A. (N. S.) 258.

(b) Defendant, falsely claiming authority to do so, agreed to sell land to plaintiff at a certain price. Pending the negotiations plaintiff told defendant he intended selling his interest in a fertilizer business to raise money to pay for the land. Plaintiff did not allege that he was obliged to sell his business to raise the money, nor that he intended to go into any other business in the event of his purchase of the land, nor did it appear but his loss would have been the same if he had purchased the land. Held, in an action for deceit, that plaintiff cannot recover special damages resulting from the sale of his business.—*Webster v. Woolford*, 81 Md. 329, 32 Atl. 319.

#### § 61. Exemplary.

#### § 62. Amount awarded.

*Cross-Reference.*

Measure in general, see ante, § 60.

#### (E) TRIAL, JUDGMENT, AND REVIEW.

*Cross-References.*

Conclusiveness of verdict or findings, see "Appeal and Error," § 999.

Grounds for new trial, see "Criminal Law," § 938.

Review dependent on whether questions are of law or of fact, see "Appeal and Error," § 842.

#### § 63. Mode and conduct of trial in general.

#### § 64. Questions for jury.

*Cross-References.*

Amount of damages, see "Damages," § 208.

Fraud inducing payment, see "Payment," § 89.

(a) It is for the jury to decide whether a variety of facts and circumstances admissible as evidence are sufficient in point of fact to prove that a bill of sale was fraudulently obtained.—*Pocock v. Hendricks*, 8 G. & J. 421.

#### § 65. Instructions.

*Cross-References.*

In actions on bills and notes, see "Bills and Notes," § 538.

Invading province of jury, see "Trial," § 194.

(a) In an action of deceit for damages alleged to be due to fraudulent representations, where plaintiff testified that defend-

ant made certain statements and defendant denied that he did, the question was whether he did or not, and the court was not warranted in instructing that, where a transaction which is challenged admits equally of an honest or dishonest construction, the jury should accept the construction in favor of honesty.—*Russell v. Stoops*, 106 Md. 138, 66 Atl. 698. [Cited and annotated in 16 L. R. A. (N. S.) 819, on damages for fraudulent representations in sale of realty.]

### § 66. Verdict and findings.

### § 67. Judgment.

#### Cross-Reference.

Discharge of judgment by debtor's discharge in bankruptcy, see "Bankruptcy," § 423.

## III. CRIMINAL RESPONSIBILITY.

#### Cross-References.

Acts denouncing fraud as crime as contravening constitutional prohibition against imprisonment for debt, see "Constitutional Law," § 83.

Extraterritorial operation of statutes, see "Criminal Law," § 18.

Malicious prosecution, see "Malicious Prosecution," § 18.

Offenses involving fraud, see "Adulteration"; "Counterfeiting"; "Embezzlement"; "False Personation"; "False Pretenses"; "Forgery"; "Fraudulent Conveyances," §§ 329-331.

Offenses involving fraud, counterfeiting or imitating trade-marks or labels, see "Trade-Marks and Trade-Names," § 48.

Offenses involving fraud, fraudulent registration, see "Elections," § 312.

Offenses involving fraud, fraudulent voting, see "Elections," § 318.

Offenses involving fraud, making false tax list, see "Taxation," § 335½.

Offenses involving fraud, making or presenting false claim against United States, see "United States," §§ 120-123.

Offenses involving fraud, procuring money under contract for labor, see "Master and Servant," § 67.

Offenses involving fraud, procuring sexual intercourse, see "Rape," § 10.

Offenses involving fraud, receiving deposits after insolvency of bank, see "Banks and Banking," §§ 83-85.

Offenses involving fraud, removal, or transfer of property subject to lien, see "Landlord and Tenant," § 253; "Sales," § 484.

Offenses involving fraud, sending forged telegrams, see "Telegraphs and Telephones," § 79.

Offenses involving fraud, trick or device as element of larceny, see "Larceny," § 14.

Offenses involving fraud, use of false weights or measures, see "Weights and Measures," § 10.

Offenses involving fraud, use of mails to defraud, see "Post Office," § 35.

Offenses involving, obtaining mail matter by fraud, see "Post Office," § 44.

Ratification as defense, see "Criminal Law," § 39.

### § 68. Offenses.

### § 69. Prosecution and punishment.

#### Cross-References.

Grounds for new trial, see "Criminal Law," §§ 941, 942.

Indictment, duplicity, see "Indictment and Information," § 125.

Indictment in language of statute, see "Indictment and Information," § 110.

Limitation of prosecutions, see "Criminal Law," § 147.

Questions for jury, sufficiency of evidence, see "Criminal Law," § 741.

Self-serving declarations of accused, see "Criminal Law," § 413.

## FRAUD ORDERS.

#### Cross-Reference.

Issuance by postmaster general, see "Post Office," § 26.

## FRAUDS, STATUTE OF.

### Scope-Note.

[INCLUDES statutory provisions making a writing necessary to the creation, assignment or surrender of estates in land, the bringing of actions on promises, agreements, or representations, or the validity of contracts, and the operation and effect of such provisions in general; requisites and sufficiency of the instrument, agreement, memorandum, or note in writing required by statute, or of the acceptance and receipt of goods or giving of earnest or part payment therefor required on contracts for sales, etc.; effect of part performance in general; and pleading the statute and evidence relating thereto.

[EXCLUDES necessity of writing to create trusts (see "Trusts"), or to bar statutes of limitations (see "Limitation of Actions"); and part performance of a con-

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

tract on one part as ground for compelling performance on the other part (see "*Specific Performance*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

**I. Agreements in Consideration of Marriage.**

- § 1. Statutory provisions.
- § 2. Nature and subject of agreement in general.
- § 3. Mutual promises to marry.
- § 4. Marriage settlements.
- § 5. Marriage as consideration.
- § 6. Marriage as acceptance of promise.

**II. Promises by Executors or Administrators.**

- § 7. Statutory provisions.
- § 8. Nature of liability of decedent.
- § 9. Promise to answer in general.
- § 10. Promises before issue of letters.
- § 11. Answering out of promisor's own estate.
- § 12. Effect of discharge of decedent's estate.

**III. Promises to Answer for Debt, Default, or Miscarriage of Another.**

- § 13. Statutory provisions.
- § 14. Nature of debt, default, or miscarriage.
- § 15. Liability of original or principal debtor.
- § 16. Pre-existing liability of promisor.
- § 17. Promise to answer in general.
- § 18. Promise to debtor to discharge debt.
- § 19. Promise to indemnify.
- § 20. — In general.
- § 21. — Co-existing liability of another.
- § 22. — Contracts of insurance.
- § 23. Original or collateral promise in general.
- § 24. Intent of parties.
- § 25. Obligation of promisor independent of liability of principal.
- § 26. Credit given to promisor.
- § 27. Promise to make, accept, or indorse bill or note.
- § 28. Promise on transfer of bill or note and mortgage.
- § 29. Guaranty of factor or agent del credere.
- § 30. Discharge of original debtor.
- § 31. — In general.
- § 32. — Novation.
- § 33. New consideration beneficial to promisor.
- § 34. Promise to apply or pay from property of debtor.
- § 35. Release or transfer of lien or security.
- § 36. Purchase of debt.

**IV. Representations.**

- § 37. Statutory provisions.
- § 38. Nature and subject-matter.
- § 39. Intent or purpose.

**IV. Representations—Continued.**

- § 40. Scope and effect.
- § 41. Effect of promise to answer for debt.
- § 42. Effect of fraud.

**V. Agreements Not to be Performed Within One Year.**

- § 43. Statutory provisions.
- § 44. Nature and subject-matter.
- § 45. Stipulations as to time.
- § 46. Intent of parties.
- § 47. Probability of performance and expectation of parties.
- § 48. Possibility of performance.
- § 49. — In general.
- § 50. — Dependent on contingency.
- § 51. Possibility of discharge or other termination without performance.
- § 52. Time of actual performance or termination.
- § 53. Commencement of period.
- § 54. Sufficiency of performance possible within year.

**VI. Real Property and Estates and Interests Therein.**

- § 55. Statutory provisions.
- § 56. Creation of estates or interests in general.
- § 57. Creation of leases.
- § 58. — In general.
- § 59. — Statutory exceptions.
- § 60. Creation of easements.
- § 61. Creation of licenses.
- § 62. Assignment, grant, or surrender of existing estates, interests, or terms.
- § 63. — In general.
- § 64. — Act or operation of law.
- § 65. — Redelivery, destruction, or alteration of deed.
- § 66. — Equitable mortgage by deposit of title deeds.
- § 67. — Assignment of mortgage.
- § 68. — Partition.
- § 69. — Exchange.
- § 70. — Establishment of boundary.
- § 71. Contracts for sale.
- § 72. — Nature of property.
- § 73. — Interest in or concerning property.
- § 74. — Nature of contract in general.
- § 75. — Contracts to devise.
- § 76. — Partnership contracts and lands.
- § 77. — Sales by auction.
- § 78. — Judicial sales.
- § 79. — Possession under contract.
- § 80. — Receipt of purchase money.

**VII. Sales of Goods.****(A) CONTRACTS WITHIN STATUTE.**

- § 81. Statutory provisions.
- § 82. Nature of property.



**VII. Sales of Goods—Continued.****(A) CONTRACTS WITHIN STATUTE—Continued.**

- § 83. Existence and condition of goods.
- § 84. Nature of contract.
- § 85. Nature and amount of price.
- § 86. Separate articles included in same transaction.

**(B) ACCEPTANCE OF PART OF GOODS.**

- § 87. Statutory provisions.
- § 88. Time for acceptance and receipt.
- § 89. Acceptance in general.
- § 90. Delivery and receipt.
- § 91. Quantity of goods.

**(C) GIVING EARNEST OR PART PAYMENT.**

- § 92. Statutory provisions.
- § 93. Time for giving or making.
- § 94. Earnest.
- § 95. Part payment.
- § 96. Tender not accepted.

**VIII. Requisites and Sufficiency of Writing.**

- § 97. Statutory provisions.
- § 98. Creation or conveyance of estates or interests in real property.
- § 99. — Nature and form of instrument.
- § 100. — Contents of instrument.
- § 101. — Signature in general.
- § 102. — Signature by agent.
- § 103. Nature and form of memorandum in general.
- § 104. Time of making memorandum.
- § 105. Contents of memorandum.
- § 106. — In general.
- § 107. — Designation and description of parties.
- § 108. — Statement of consideration.
- § 109. — Subject-matter in general.
- § 110. — Description of lands.
- § 111. — Description of goods.
- § 112. — Statement of price.
- § 113. — Statement of terms and conditions.
- § 114. Signature of memorandum.
- § 115. — In general.
- § 116. — By agent.
- § 117. Delivery of memorandum.
- § 118. Separate writings.

**IX. Operation and Effect of Statute.**

- § 119. Operation as to rights or remedies in general.
- § 120. What law governs transactions.
- § 121. Construction of statute in general.
- § 122. Retroactive operation of statute.
- § 123. Operation as tenancy from year to year, month to month, or at will, of estate or interest created without writing.

**IX. Operation and Effect of Statute—Continued.**

- § 124. Validity of conveyances without deed or note in writing.
- § 125. Validity and enforcement of contracts in general.
- § 126. Promise to reduce agreement to writing.
- § 127. Writing subsequent to oral agreement.
- § 128. Effect on collateral or subsequent contracts.
- § 129. Part performance in general.
- § 130. Contracts in part within statute.
- § 131. Modification of contract.
- § 132. Readiness and willingness to perform contract.
- § 133. Contracts performed as to part within statute.
- § 134. Contracts performed only as to part not within statute.
- § 135. — In general.
- § 136. — Agreements not to be performed within one year.
- § 137. — Agreements relating to real property.
- § 138. Contracts implied by law on part performance.
- § 139. Contracts completely performed.
- § 140. Discharge of contracts without performance.
- § 141. Contracts as ground of defense.
- § 142. Contracts as ground for equitable relief.
- § 143. Persons to whom statute is available.
- § 144. Waiver of bar of statute.

**X. Pleading, Evidence, Trial, and Review.**

- § 145. Pleading contract or transaction within statute.
- § 146. — As cause of action in general.
- § 147. — As ground of defense.
- § 148. — Writing or other compliance with statute.
- § 149. — Matter in avoidance of bar of statute.
- § 150. Demurrer raising defense.
- § 151. Pleading statute as defense.
- § 152. — Necessity.
- § 153. — Sufficiency of denials and allegations.
- § 154. — Amendment to plead statute.
- § 155. — Demurrer or reply to plea or answer.
- § 156. Issues, proof, and variance.
- § 157. Objections to evidence of oral contract.
- § 158. Evidence.
- § 159. Questions for jury.
- § 160. Instructions.
- § 161. Verdict and findings.
- § 162. Review.

*Cross-References.*

Applicability of Arkansas laws to Indian Territory, see "Indians," § 39.

Interruption of adverse possession by acts ineffectual on account of statute of frauds, see "Adverse Possession," § 50.

Liability of agent on contract void under statute of frauds, see "Principal and Agent," § 155.

Necessity of writing showing acknowledgment or new promise within statute of limitations, see "Limitation of Actions," § 146.

Necessity of writing to confer authority on agent, see "Principal and Agent," § 117.

Necessity of writing to create trust for benefit of creditors, see "Assignments for Benefit of Creditors," § 52.

Necessity of written assignment of debt as against creditors of assignor, see "Fraudulent Conveyances," § 136.  
 Necessity of written promise to pay debt discharged in bankruptcy, see "Bankruptcy," § 434.  
 Presumption on appeal that contract is in writing, see "Appeal and Error," § 909.  
 Presumptions as to laws of other states, see "Evidence," § 80.  
 Specific performance of oral contracts with-

in statute of frauds, see "Specific Performance," § 39.  
 Validity of oral contract for rate of interest in excess of legal rate, see "Interest," § 34.  
 Validity of parol assignment of mechanic's lien, see "Mechanics' Liens," § 203.  
 Validity of trusts, see "Trusts," §§ 17, 18, 63½.  
 Writing within statute of frauds as affording cause of action for deceit, see "Fraud," § 25.

## I. AGREEMENTS IN CONSIDERATION OF MARRIAGE.

### Cross-References.

Effect of performance, see post, § 139.  
 Parol agreements void under statute as consideration for conveyance, see "Fraudulent Conveyances," § 94.

### § 1. Statutory provisions.

#### Annotation.

See Stat. 29 Car. II., c. 3, § 4 (Alex. Brit. Stat. [Coe's ed.] 690).

(a) Although marriage is not per se a part performance of an antenuptial marital contract sufficient to take it out of the statute of frauds, yet it is a sufficient consideration for such a contract, and one which courts regard with favor.—*Crane v. Gough*, 4 Md. 316.

(b) To prevail against the statute of frauds, the proof of an antenuptial agreement between the parents of the parties about to be married must be clear and positive of a contract certain and concluded.—*Stoddert v. Tuck*, 4 Md. Ch. 475.

(c) A postnuptial settlement reciting an antenuptial parol contract is not valid as against creditors.—*Winn v. Albert*, 2 Md. Ch. 169. [Cited and annotated in 49 L. R. A. (N. S.) 27, on necessity of pleading statute of frauds.] Affirmed on appeal, *Albert v. Winn*, 5 Md. 66. [Cited and annotated in 11 L. R. A. (N. S.) 595, on postnuptial written contract to confirm antenuptial oral contract relinquishing rights.]

(d) Where a person writes a letter promising a man to give a fortune with his daughter if the man would marry her, and under the encouragement of the letter the man does marry her, the agreement having been executed so far as it could be on the part of the husband, it will be enforced against the father, where the letter imports a concluded agreement, or affords material for a more formal agreement.—*Ogden v. Ogden*, 1 Bland 284.

## § 2. Nature and subject of agreement in general.

(a) An executed parol antenuptial agreement that the husband shall have the wife's notes and bonds, and allow her the interest thereon for pin money, is valid, and will enable the husband's representatives to defend their possession of such bonds and notes against the representatives of the wife, although the husband had not reduced them into possession by virtue of his marital rights.—*Crane v. Gough*, 4 Md. 316.

(b) A marriage agreement by a father with the father of his son's intended wife to give the son certain property on his marriage is valid as against the father's executor, though not in writing.—*Bowie's Ex'r v. Bowie*, 1 Md. 87; *Tuck v. Bowie*, Id.

(c) A father, in contemplation of his daughter's marriage, and with the knowledge of her intended husband, made her a parol advancement of a house and land, and the marriage took place accordingly, and the daughter entered into possession of the premises, and retained them until her death. Held, that the case was not within the statute of frauds.—*Dugan v. Gittings*, 3 Gill 138, 43 Am. Dec. 306.

## § 3. Mutual promises to marry.

(a) The statute of frauds does not embrace mutual promises to marry, but only agreements to pay marriage portions.—*Ogden v. Ogden*, 1 Bland 284.

## § 4. Marriage settlements.

### Cross-Reference.

Validity as to creditors, see "Fraudulent Conveyances," § 94.

## § 5. Marriage as consideration.

### Cross-References.

See ante, §§ 1, 2.

Validity as to creditors, see "Fraudulent Conveyances," § 94.

## § 6. Marriage as acceptance of promise.

*Cross-Reference.*

See ante, §§ 1, 2.

## II. PROMISES BY EXECUTORS OR ADMINISTRATORS.

*Cross-References.*

Credit given administrator, see post, § 26.  
 Forbearance as consideration, see post, § 33.

Original or collateral promise, see post, § 23.

§§ 7-12. (See Analysis.)

## III. PROMISES TO ANSWER FOR DEBT, DEFAULT, OR MISCARRIAGE OF ANOTHER.

*Cross-References.*

Effect of complete performance, see post, § 139.

Part performance, see post, § 129.

Requisites and sufficiency of memorandum, see post, §§ 103, 106-113, 115, 116, 118.

Necessity for consideration for promise to pay past indebtedness of another, see "Contracts," § 47.

Validity of oral acceptance in general, see "Bills and Notes," § 69.

### § 13. Statutory provisions.

*Cross-Reference.*

See post, § 17.

*Annotation.*

See Stat. 29 Car. II., c. 3, § 4 (Alex. Brit. Stat. [Coe's ed.] 690).

### § 14. Nature of debt, default, or miscarriage.

*Cross-Reference.*

See post, § 17.

(a) A guaranty, by a third party, of the vendor's warranty of the soundness of a horse, is a collateral undertaking, and must be in writing; and, where the party making such guaranty paid the purchase money for the horse to the vendor at the purchaser's request, the latter cannot rely on such parol agreement as a defense to an action at law by the guarantor to recover the money so paid.—*Glenn v. Rogers*, 3 Md. 312.

(b) A. represented N. to B. as a friend of his residing in the neighborhood, and thereby induced B. to sell to them certain slaves for a less price than they were worth, with an understanding that they were to be kept by A. and N. in the neighborhood; whereas the

slaves were intended for N., who was a slave dealer, and who removed those so purchased out of the state into South Carolina. B. brought an action against A. to recover damages for the fraud and deceit. *Held*, that this was not a verbal undertaking to answer for the default of another, which would be void under the statute of frauds.—*Adams v. Anderson*, 4 H. & J. 558. [Cited and annotated in 10 L. R. A. (N. S.) 647, on future promise as fraud.]

### § 15. Liability of original or principal debtor.

*Cross-Reference.*

See post, § 17.

### § 16. Pre-existing liability of promisor.

(a) A married woman sued two defendants on a promissory note, one of whom set up the defense that, being an indorser on the note of plaintiff's husband, plaintiff, prior to the maturity of the note sued on, told him that she would see him paid if her husband did not pay the note, and, when such note became due, defendant paid it out of money due by him on the note to plaintiff. *Held*, a promise to pay the debt of another, and not binding on plaintiff.—*Bomen v. Hendrickson*, 44 Md. 609; *Beasten v. Same*, Id.

(b) The statute of frauds does not apply to a case where a complainant seeks to compel a defendant to pay his own debt to a party to whom his creditor has assigned it, but, to entitle the complainant to relief, he must prove that the assignment was made, and that the defendant had notice of it. This case must be distinguished from the case where an attempt is made to charge a person with the debt of another, which can only be done in writing, and upon the consideration expressed in the writing itself.—*Rider v. Riely*, 2 Md. Ch. 16; *Same v. Same*, 22 Md. 540.

(c) The agreement of a father to pay for the education and maintenance of his infant child is not within the statute of frauds as a promise to answer for the debt of another.—*Thompson v. Dorsey*, 4 Md. Ch. 149. [Cited and annotated in 42 L. R. A. (N. S.) 1116, on infants: education or instruction as necessary.]

(d) The president of a corporation has no such interest in its affairs as to make his

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

promise to pay a pre-existing debt of the corporation enforceable.—*Wyman v. Gray*, 7 H. & J. 409. [Cited and annotated in 19 L. R. A. 679, on personal liability of officers on note made for corporation; in 20 L. R. A. 709, on extrinsic evidence to show who is liable as maker of note; in 46 L. R. A. 758, 763, 772, on rights of transferee after maturity of negotiable paper; in 21 L. R. A. (N. S.) 1054, on liability of principal on negotiable paper executed by agent; in 42 L. R. A. (N. S.) 31, on liability of one signing contract in representative capacity.]

### § 17. Promise to answer in general.

#### Cross-Reference.

See ante, §§ 13, 15.

#### Annotation.

Is oral promise to pay another's pre-existing debt, made in order to secure benefit to promisor without releasing original debtor, within statute of frauds.—22 L. R. A. (N. S.) 1077; 40 L. R. A. (N. S.) 242, notes.

Contemporary promise of one person to pay where benefit inures to another as a promise to answer for default of another within statute of frauds.—15 L. R. A. (N. S.) 214; 32 L. R. A. (N. S.) 598, notes.

(a) A parol promise by a wife to pay the debt of her husband is void under the statute of frauds.—*Lyell v. Walbach*, 113 Md. 574, 77 Atl. 1111.

(b) The statute of frauds applies to collateral engagements, upon which the guarantor is conditionally liable, but not to original and independent agreements.—*White v. Solomonsky*, 30 Md. 585.

(c) A postnuptial settlement reciting an antenuptial parol contract is not valid as against creditors.—*Winn v. Albert*, 2 Md. Ch. 169. [Cited and annotated in 49 L. R. A. (N. S.) 27, on necessity of pleading statute of frauds.] Affirmed on appeal, *Albert v. Winn*, 5 Md. 66. [Cited and annotated in 11 L. R. A. (N. S.) 595, on postnuptial written contract to confirm antenuptial oral contract relinquishing rights.]

(d) The promise of a third party to pay a pre-existing debt, without any new consideration, must be in writing.—*Elder v. Warfield*, 7 H. & J. 391. [Cited and annotated in 15 L. R. A. (N. S.) 217, 221, on oral contemporary promise to pay where benefit inures to another.]

### § 18. Promise to debtor to discharge debt.

(a) A new and original promise to a debtor, upon full consideration, to discharge his

debt, is not such a promise to pay the debt of another as is prohibited by the statute of frauds.—*Harwood v. Jones*, 10 G. & J. 404, 32 Am. Dec. 180.

### §§ 19-22. Promise to indemnify.

### § 23. Original or collateral promise in general.

#### Cross-References.

New consideration for promise, see post, § 33.

Promise by married woman to pay for board charged to her husband, see ante, § 16.

Promise to pay out of proceeds of insurance, see post, § 34.

(a) Proof that a decedent promised to pay for work done by another was proof of an original undertaking and was binding, though not in writing.—*Huff v. Simmers*, 114 Md. 548, 79 Atl. 1008.

(b) Where defendant company sublet part of its construction contract to C., which, in turn, sublet it to plaintiff, plaintiff's oral agreement with defendant, on fault being found with its work, and payment refused, that if defendant would pay C., so that it could pay plaintiff, plaintiff would hold defendant harmless was not one of guaranty or suretyship, but a valid original undertaking.—*Oliver & Burr v. Noel Const. Co.*, 109 Md. 465, 71 Atl. 959.

(c) A contract by which defendant was alleged to have guaranteed the payment of a mortgage debt, in consideration that plaintiff, who was not the equitable owner of the debt, would forbear to enforce the same for a reasonable time, was a promise to answer for the debt of another, within the statute of frauds.—*Commonwealth Bank v. Kirkland*, 102 Md. 662, 62 Atl. 799.

(d) Where a materialman, on being applied to by a contractor for materials for a building, went to the owners and asked that they give the order for the materials, whereupon one of them told the materialman to deliver the materials and they would pay for them, that they would pay for everything that went into the buildings, and for the materialman to charge the materials to the contractor and hold him, as well as the owners, their contract was an original promise and was not within the statute of frauds.—*Oldenburg & Kelley v. Dorsey*, 102 Md. 172, 62

Atl. 576. [Cited and annotated in 15 L. R. A. (N. S.) 215, on oral contemporary promise to pay where benefit inures to another.]

(e) A written agreement by an agent, who negotiated the sale of a farm to plaintiff, to see that plaintiff was paid for every article sold to him and removed from the farm, made at a time when plaintiff claimed that personal property which he had bought with the farm was being removed therefrom, and while the contract was still unperformed and it was open to plaintiff to rescind, and presumably to induce plaintiff to consummate the contract, so that the agent would be sure of his commissions, was an original undertaking on the part of the agent, and not a collateral one within the statute of frauds.—*Dryden v. Barnes*, 101 Md. 346, 61 Atl. 342.

(f) Where materials are delivered to a contractor on his sole credit, a subsequent oral promise of the owner of the building to see that the materialman was paid was within the statute of frauds.—*East Baltimore Lumber Co. v. K'nessett Israel Aushe S'phard Congregation*, 100 Md. 125, 689, 59 Atl. 180, 62 Atl. 575, on motion for rehearing. *Same v. Walderman*, Id.

(g) Where B. selected goods of A., and A. refused to deliver them to B., until he saw C., and C. agreed to pay for them if delivered to B., in case B. did not, it was held that the engagement of C. was collateral, and void under the statute of frauds, unless in writing.—*Conolly v. Kettlewell*, 1 Gill 260. [Cited and annotated in 15 L. R. A. (N. S.) 220, on oral contemporary promise to pay where benefit inures to another.]

#### § 24. Intent of parties.

#### § 25. Obligation of promisor independent of liability of principal.

#### § 26. Credit given to promisor.

(a) A joint promise by a contractor and the owners of a building to pay for materials furnished, credit being given partly to both, is not within the statute of frauds.—*East Baltimore Lumber Co. v. K'nessett Israel Aushe S'phard Congregation*, 100 Md. 125, 689, 59 Atl. 180, 62 Atl. 575, on motion for rehearing. *Same v. Walderman*, Id.

(b) To enable a vendor of goods to recover the price thereof upon a parol guaranty, he must show that credit was given solely and exclusively to the guarantor. If any credit at all was given to the vendee, the guarantor's undertaking was collateral, and, being in parol, was void under the statute of frauds.—*Norris v. Graham*, 33 Md. 56. [Cited and annotated in 15 L. R. A. (N. S.) 216, on oral contemporary promise to pay where benefit inures to another.]

(c) Whether an undertaking to pay the debt of another be original, or collateral, depends upon to whom was the credit given at the time of the sale and delivery of the goods. That the goods were charged to the party to whom they were delivered is not conclusive, but only a fact to be submitted, with others, to the jury.—*Elder v. Warfield*, 7 H. & J. 391. [Cited and annotated in 15 L. R. A. (N. S.) 217, 221, on oral contemporary promise to pay where benefit inures to another.] *Myer v. Grafflin*, 31 Md. 350. [Cited and annotated in 15 L. R. A. (N. S.) 215, on oral contemporary promise to pay where benefit inures to another.]

(d) Where the person undertaken for is originally liable, the promise of another to answer for him is collateral, as a promise "to see one paid" for goods delivered to a third party.—*Cropper v. Pittman*, 13 Md. 190. [Cited and annotated in 15 L. R. A. (N. S.) 217, on oral contemporary promise to pay where benefit inures to another.]

(e) A physician attended for several days as his patient a man who had been injured by a railroad accident, and while this attendance was going on the railroad company, by its agent, requested him to continue his attendance, and promised that the company would pay him for his services. Held, that this did not amount to an original undertaking on the part of the company to pay for future services, unless the jury should believe they were rendered upon the credit of the company, and not upon that of the patient.—*Northern Cent. Ry. Co. v. Prentiss*, 11 Md. 119. [Cited and annotated in 20 L. R. A. 697, on authority to employ medical services for employee or other person.]

(f) Although a grandfather is not liable to support his grandchildren, yet a contract made by him on his own credit for their support and education is an original under-

taking, and not within the statute of frauds.—*Ellicott v. Peterson*, 4 Md. 476; *Same v. Turner*, Id. [Cited and annotated in 53 L. R. A. 356, on moral obligation as consideration; in 15 L. R. A. (N. S.) 319, on parol contracts for services performable within a year, though not so intended.]

(g) Although marriage is not per se a part performance of an antenuptial marital contract sufficient to take it out of the statute of frauds, yet it is a sufficient consideration for such a contract, and one which courts regard with favor.—*Crane v. Gough*, 4 Md. 316.

(h) Where a person writes a letter promising a man to give a fortune with his daughter if the man would marry her, and under the encouragement of the letter the man does marry her, the agreement having been executed so far as it could be on the part of the husband, it will be enforced against the father, where the letter imports a concluded agreement, or affords material for a more formal agreement.—*Ogden v. Ogden*, 1 Bland 284.

## § 27. Promise to make, accept, or indorse bill or note.

### Cross-References.

Sufficiency of consideration for acceptance, see post, § 33.

Validity of oral acceptances in general, see "Bills and Notes," § 69.

## § 28. Promise on transfer of bill or note and mortgage.

(a) An accommodation indorser of a note who has an interest in a judgment against the maker, and who, being held as indorser, borrows money to pay the note, uniting with his co-owner in an assignment of the judgment to the lender to secure him, and guaranteeing its payment, makes the guaranty for his own benefit, and the undertaking is not within the statute of frauds.—*Little v. Edwards*, 69 Md. 499, 16 Atl. 134.

(b) A promise by the indorser of a single bill at the time of the indorsement, that if the maker did not pay the bill he would do so himself, and that his indorsement made it as good as gold, is void under the statute of frauds.—*Talbott v. Suit*, 68 Md. 443, 13 Atl. 356.

## § 29. Guaranty of factor or agent del credere.

## §§ 30-32. Discharge of original debtor.

### Cross-References.

Necessity of discharge where contract is supported by consideration, see post, § 33.

Promise to debtor as affected by question of discharge, see ante, § 18.

(a) A promise to pay the amount of the debt of another, in consideration that the debtor and his property shall be released from the debt, is not within the statute.—*Andre v. Bodman*, 13 Md. 241, 71 Am. Dec. 628.

## § 33. New consideration beneficial to promisor.

### Cross-Reference.

Consideration beneficial to promisor where promise is made to debtor to discharge debt, see ante, § 18.

(a) A parol promise to pay the debt of another, in consideration of forbearance to sue the original debtor, without any new or super-added consideration moving from the creditor to the promisor, is void, under the statute of frauds.—*Thomas v. Delphy*, 33 Md. 373.

(b) G., a broker, received from defendant certain moneys to invest in bonds, and, being then indebted to plaintiff, gave to the latter his check for the amount due him, and made a deposit of five state bonds to make his check good. Of the bonds thus deposited, three had been purchased upon the order and with the money of defendant, and, though his initials were marked on them with pencil, they had never been delivered to him. The bonds were transferable by delivery, and neither the bank nor plaintiff knew of defendant's claim to a portion of them. The bank overpaid checks of G. after the deposit, but did not pay the check given to plaintiff. A few days after depositing the bonds in the bank G. failed. When called on by defendant, G. told him the bonds were pledged with the bank to secure its overpayment of his checks and the unpaid check to the plaintiff. Then defendant proposed, if G. would give him an order for the five bonds, he would make good the amount due on them to the bank, and also pay G.'s check to plaintiff, to which G. agreed. Upon presentation to the bank of the orders given under this agreement, and upon payment of the sum due the bank, the bonds were de-

livered up. After they had been obtained, G. and plaintiff called on defendant to know why the check had not been paid. Defendant admitted his promise to pay, but said he was too smart to pay that check, and had procured the bonds without paying more than the bank's advances. In an action brought against defendant on his promise, *held*, that this case was clearly within the well-known exception to the statute of frauds that wherever the main purpose and object of the promisor is, not to answer for another, but to subserve some purpose of his own, his promise is not within the statute, although it may be in form a promise to pay the debt of another.—*Small v. Schaefer*, 24 Md. 143. [Cited and annotated in 22 L. R. A. (N. S.) 1079, on validity of oral promise to pay another's pre-existing debt, made to secure benefit to promisor, without releasing original debtor.]

#### § 34. Promise to apply or pay from property of debtor.

##### Cross-References.

Acceptance of order by one having funds of debtor, see ante, § 27.

Promise to debtor to pay out of consideration for property purchased, see ante, § 18.

(a) A promise to pay a debt out of property put in the promisor's hands by the debtor for that purpose is not within the statute.—*Raymer v. Sim*, 3 H. & McH. 451, 1 Am. Dec. 379.

#### § 35. Release or transfer of lien or security.

##### Cross-Reference.

Forbearance to enforce lien, see ante, § 33.

#### § 36. Purchase of debt.

### IV. REPRESENTATIONS.

##### Cross-Reference.

Requisites and sufficiency of memorandum, see post, §§ 103, 118.

#### §§ 37-42. (See Analysis.)

### V. AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR.

##### Cross-References.

Contracts performed only as to part not within statute, see post, § 136.

Leases for one year, see post, § 59.

Part performance, see post, § 129.

Contract of partnership at will, see "Partnership," § 61.

#### § 43. Statutory provisions.

##### Annotation.

See Stat. 29 Car. II., c. 3, § 4 (Alex. Brit. Stat. [Coe's ed.] 690).

#### § 44. Nature and subject-matter.

##### Annotation.

Statute of frauds: distinction between sales of personalty and agreements for work and labor.—14 L. R. A. 230; 30 L. R. A. (N. S.) 319, notes.

Contracts for permanent employment.—35 L. R. A. 514, note.

(a) A contract to marry is not within the statute of frauds, requiring "any agreement" not to be performed within a year to be in writing.—*Lewis v. Tapman*, 90 Md. 294, 45 Atl. 459, 47 L. R. A. 385. [Cited and annotated in 66 L. R. A. 798, on refusal or failure to marry at time or place agreed on as breach of marriage contract.]

#### § 45. Stipulations as to time.

(a) An agreement by an infant to work seven years for his board is not within the statute.—*Wilhelm v. Hardman*, 13 Md. 140; *Hardman v. Wilhelm*, Id. [Cited and annotated in 15 L. R. A. 212, 213, on infant's right to repudiate contract for services and sue on quantum meruit; in 15 L. R. A. (N. S.) 320, on parol contracts for services performable within a year, though not so intended.]

#### § 46. Intent of parties.

##### Annotation.

Effect of statute of frauds upon parol contracts for services which may, but are not intended to, be performed within a year.—15 L. R. A. (N. S.) 313, note.

#### § 47. Probability of performance and expectation of parties.

#### § 48. Possibility of performance.

#### § 49.— In general.

(a) Agreement between plaintiffs' assignor and a company by which it was to do the repair work to certain boilers manufactured by him, dividing the net profits and applying his share on an indebtedness, *held* not void under the statute of frauds, as not to be performed within one year, because the indebtedness might have been paid within one year and the agreement then terminated at any time.—*Campbell v. Burnett*, 120 Md. 214, 87 Atl. 894.



(b) Where a contract may be performed within a year from its date, and it does not appear that it is not to be performed and fully completed within that time, the statute of frauds does not apply.—*Neal v. Parker*, 98 Md. 254, 57 Atl. 213.

(c) An agreement which may or may not be performed within a year is not required by the statute of frauds to be in writing.—*Cole v. Singerly*, 60 Md. 348. [Cited and annotated in 15 L. R. A. (N. S.) 322, on parol contracts for services performable within a year, though not so intended.]

#### § 50.—Dependent on contingency.

##### Cross-Reference.

Agreement to pay interest during life, see post, § 56.

(a) An oral contract for personal service for more than a year provided defendant should remain in business for that length of time is not within the statute of frauds.—*H. J. McGrath Co. v. Marchant*, 117 Md. 472, 83 Atl. 912.

#### § 51. Possibility of discharge or other termination without performance.

(a) A contract by which a minor agrees to work on a farm seven years for his board, schooling, and clothes, with an additional payment, should he remain the full term, is not within the statute, as death may terminate it within a year.—*Wilhelm v. Hardman*, 13 Md. 140; *Hardman v. Wilhelm*, Id. [Cited and annotated, see supra, § 45.]

(b) The statute of frauds (29 Car. II., c. 3, § 4) does not apply to any contract which can by any possibility be fulfilled or completed in the space of a year, though the parties may have intended that its operation should extend through a much longer period. Thus, where a grandfather of two minor children agreed by parol to pay the plaintiff, their stepfather, whatever expense he might incur for their support and education, it was held that the agreement was not within statute, because the death of the children might occur within a year and terminate the contract.—*Ellicott v. Turner*, 4 Md. 476; *Ellicott v. Peterson*, Id. [Cited and annotated in 53 L. R. A. 356, on moral obligation as consideration; in 15 L. R. A. (N. S.) 319, on parol contracts for services performable within a year, though not so intended.]

#### § 52. Time of actual performance or termination.

(a) A contract of employment for one year, to commence when the employee secures a release from a former employment, is not within the statute of frauds, where his release on the date of the contract was a possibility, though not in fact secured till a later date.—*Baltimore Breweries Co. v. Callahan*, 82 Md. 106, 33 Atl. 460. [Cited and annotated in 1 L. R. A. (N. S.) 447, on mutuality of obligation where one party's obligation not definite and certain; in 2 L. R. A. (N. S.) 739, on validity of oral contract for year's future services; in 15 L. R. A. (N. S.) 321, on parol contracts for services performable within a year, though not so intended.]

#### § 53. Commencement of period.

##### Cross-Reference.

As affected by contingency of death of party, see ante, § 51.

##### Annotation.

Validity of oral contract for a year's services to commence in futuro.—2 L. R. A. (N. S.) 738, note.

Conditional execution under parol agreement that contract shall not take effect until others have signed it.—45 L. R. A. 321, note.

#### § 54. Sufficiency of performance possible within year.

##### Cross-Reference.

Contract of partnership at will, see "Partnership," § 61.

### VI. REAL PROPERTY AND ESTATES AND INTERESTS THEREIN.

##### Cross-References.

Contracts including real property, see post, § 130.

Contracts not to be performed within one year, see ante, § 44.

Contracts performed only as to part not within statute, see post, § 137.

Effect of complete performance, see post, § 139.

Part performance, see post, § 129.

Requisites and sufficiency of memorandum of contract of sale, see post, §§ 103, 106-113, 115-118.

Requisites and sufficiency of writing creating or conveying estates or interests in real property, see post, §§ 99-102.

Dedication, see "Dedication," § 1.

Employment of broker for sale of real estate, see "Brokers," §§ 7, 43.

Parol leases in general, see "Landlord and Tenant," § 23.

Parol partition in general, see "Partition," § 5.

Presumption that assignment of lease satisfies statute of frauds, see "Landlord and Tenant," § 78.

Validity of parol gift of land aside from statute of frauds, see "Gifts," § 25.

Vendee under parol agreement as owner having power to charge land with mechanic's lien, see "Mechanics' Liens," § 59.

Waiver of title acquired by adverse possession, see "Adverse Possession," § 110.

## § 55. Statutory provisions.

### Annotation.

See Stat. 29 Car. II., c. 3, §§ 1-9 (Alex. Brit. Stat. [Coe's ed.] 689, 690).

## § 56. Creation of estates or interests in general.

### Cross-Reference.

See post, §§ 60, 63, 69, 71, 74, 76, 128.

### Annotation.

Validity of parol partnership for dealing in lands.—16 L. R. A. 745; 4 L. R. A. (N. S.) 427; 33 L. R. A. (N. S.) 883; L. R. A. 1915A, 521, notes.

Validity of parol lease for a year to commence in futuro.—49 L. R. A. (N. S.) 820, note.

(a) The parol agreement of the parties that they should purchase a farm for a certain amount and after its purchase should move onto and jointly operate it, the net proceeds of their joint labors to be applied to payments of the purchase money, and after it was so paid for each to have a half interest therein as tenants in common, is within the statute of frauds.—*Wiley v. Wiley*, 115 Md. 646, 81 Atl. 180, Ann. Cas. 1913A, 789.

(b) A verbal agreement to form a partnership to deal in lands is not within the statute of frauds.—*Morgart v. Smouse*, 103 Md. 463, 63 Atl. 1070, 115 Am. St. Rep. 367. [Cited and annotated in 49 L. R. A. (N. S.) 11, on necessity of pleading statute of frauds; in 19 L. R. A. (N. S.) 879, on applicability of statute of frauds to assignment or surrender of purchaser's interest under land contract; in 33 L. R. A. (N. S.) 884, on validity of parol partnership to deal in land.]

(c) An agreement whereby plaintiff was to hold himself in readiness to loan defendant money on mortgage at any time between specified dates, and defendant was to pay plaintiff interest until the security was offered and the loan consummated, was not primarily an agreement to mortgage land, and, as such, within the fourth section of

the statute of frauds, but the obligation to mortgage was subsidiary to the agreement to keep money in readiness on the one hand and to pay interest on the other, and the statute of frauds had no application.—*Ehlen v. Sel-den*, 99 Md. 699, 59 Atl. 120.

(d) The statute of frauds had no application to an agreement of F. and C. that F. shall procure persons to lease land of C., subject to certain ground rents, and to build thereon; the ground rents to be sold, and the proceeds thereof, after certain deductions, to be divided equally between them.—*Bruns v. Spalding*, 90 Md. 349, 45 Atl. 194.

(e) An agreement respecting lands within the fourth section of the statute of frauds must itself be in writing; but a trust within the seventh section need not be constituted, but merely proved, by some writing.—*Albert v. Winn*, 5 Md. 66. [Cited and annotated in 11 L. R. A. (N. S.) 595, on post-nuptial written contract to confirm ante-nuptial oral contract relinquishing rights.]

(f) An answer in equity, made in 1846, admitting a parol promise in 1845 to mortgage certain lands, cannot relate back to the parol promise and give it efficacy as of the time it was first made, nor prejudice any rights acquired prior to the date of the written admission.—*Albert v. Winn*, 5 Md. 66. [Cited and annotated, see supra.]

## § 57. Creation of leases.

### Cross-References.

Agreements relating to leases, see ante, § 56.

Creation of easement by landlord, see post, § 60.

Postponement of performance, see ante, § 53.

Statutory provisions as to leases for less than a year, see ante, § 43.

Statutory provisions, see ante, § 55.

Transfer of leases, see post, § 63.

Validity of leases for more than one year, see ante, § 44.

Decisions of state courts as authority in federal courts, see "Courts," § 367.

Validity of parol leases in general, see "Landlord and Tenant," § 23.

## § 58.— In general.

## § 59.— Statutory exceptions.

### Cross-Reference.

Postponement of performance as taking lease out of statutory exception, see ante, § 53.

(a) The effect of the statute of frauds as to parol leases not exceeding three years from

the making thereof is that the leases are valid, and whatever remedy can be had upon them in their character of leases may be resorted to; but they do not confer the right to sue the lessee for damages for not taking possession.—*Union Banking Co. v. Gittings*, 45 Md. 181. (See Stat. 29 Car. II., c. 3, § 2 (Alex Brit. Stat. [Coe's ed.] 689). [Cited and annotated in 49 L. R. A. (N. S.) 820, on validity of parol lease for a year to commence in futuro; in 26 L. R. A. 799, on compensation for use of premises under lease invalid under statute of frauds; in 42 L. R. A. (N. S.) 657, on effect at law of entry under lease void under statute of frauds.]

### § 60. Creation of easements.

#### Cross-References.

See ante, § 56; post, §§ 69, 71, 74, 128.

Transfer of interests created by easements, see post, § 63.

(a) A., tenant for life, permitted B. to cut a ditch through her land to supply his mill with water. Upon the death of A., C., the remainder-man, demanded compensation for the ditch, and a verbal agreement was made, securing to the complainant the use of the ditch for a sum to be determined by arbitrators. C. refused to perform their award, and, in answer to a bill by B. for relief, admitted the agreement and award, but relied on the statute of frauds as a bar, and the bill was dismissed, with costs.—*Hamilton v. Jones*, 3 G. & J. 127. [Cited and annotated in 49 L. R. A. (N. S.) 27, on necessity of pleading statute of frauds.]

### § 61. Creation of licenses.

### § 62. Assignment, grant, or surrender of existing estates, interests, or terms.

#### Cross-References.

Presumption that assignment of lease satisfies statute of frauds, see "Landlord and Tenant," § 78.

Waiver of title acquired by adverse possession, see "Adverse Possession," § 110.

### § 63.— In general.

#### Cross-Reference.

See ante, §§ 56, 60; post, §§ 69, 71, 74, 128.

(a) A verbal assignment of a one-half interest in an equitable estate in certain lands for the purpose of developing and selling the same at a profit is void under the statute of frauds.—*Morgart v. Smouse*, 103 Md. 463,

63 Atl. 1070, 115 Am. St. Rep. 367. [Cited and annotated, see supra, § 56.]

(b) A verbal agreement in regard to the transfer of a leasehold interest in land, and the surrender of a mortgage thereon, is void under the statute of frauds.—*Polk v. Reynolds*, 31 Md. 106.

(c) A right of way once established by prescription, which presupposes a grant, or by a grant, cannot be extinguished by a parol agreement.—*Pue v. Pue*, 4 Md. Ch. 386. [Cited and annotated in 44 L. R. A. (N. S.) 90, on easement by prescription where original use was licensed; in 8 L. R. A. (N. S.) 150, on burden of showing permissiveness of use on which prescriptive easement is claimed.]

(d) An agreement to remove incumbrances on land and put the plaintiff in possession, made by an execution creditor at the sale of land on execution, in order to induce the plaintiff to bid off the same, is within the statute, and void if made by parol.—*Duvall v. Peach*, 1 Gill 172.

(e) A parol agreement to surrender possession held under a lease and to waive a claim for betterments under a promise by the landlord to pay a sum of money, followed by an actual surrender and possession by the landlord, will support an action.—*Lamar v. McNamee*, 10 G. & J. 116, 32 Am. Dec. 152.

(f) A parol agreement between a landlord and tenant that the latter should surrender the residue of his term to a purchaser, in consideration of the landlord's giving up the rent in arrear, is void, as within the statute of frauds, and is no evidence in an action in which the arrears of rent were claimed.—*Lammott v. Gist*, 2 H. & G. 433, 18 Am. Dec. 295.

§§ 64-67.—(See Analysis.)

### § 68.— Partition.

#### Cross-References.

Partition or exchange, see post, § 69.

Parol partition in general, see "Partition," § 5.

### § 69.— Exchange.

#### Cross-References.

See ante, §§ 56, 60, 63; post, §§ 71, 74.

Exchange of horses, see post, § 84.

(a) An exchange of lands cannot be proved by parol evidence.—*Maydwell v. Carroll*, 3 H. & J. 361.

## § 70.—Establishment of boundary.

### Cross-Reference.

Parol evidence of agreement establishing boundaries, to prove title, see ante, § 56.

## § 71. Contracts for sale.

### Cross-References.

See ante, §§ 63-70.

Agreements relating to purchase or sale of land, see ante, § 56.

Formation of partnership, see ante, § 56.

Interests created by contract of sale, see ante, § 63.

Possession under contract, see post, § 79.

Receipt of purchase money, see post, § 80.

Requisites and sufficiency of memorandum, see post, §§ 103, 106-113, 115-118.

## § 72.—Nature of property.

### Cross-References.

Sale of crop to be grown, see post, § 83.

Statement of consideration, see post, § 108.

Sufficiency of acceptance, see post, § 89.

Sufficiency of description, see post, § 110.

### Annotation.

Effect of oral contract to cut standing timber to pass title to the same.—47 L. R. A. (N. S.) 877, note.

Validity of oral sale of standing timber.—19 L. R. A. 721, note.

Contract for timber to be sawed as a sale within the statute of frauds.—14 L. R. A. 233; 30 L. R. A. (N. S.) 324, notes.

Must a contract for the sale of growing crops or a reservation of the same by the grantor in deed be in writing?—23 L. R. A. (N. S.) 1218, note.

(a) A sale of growing trees to be presently cut and removed by the buyer, is not a sale of an interest in lands, within the statute of frauds (§ 4).—*Leonard v. Medford*, 85 Md. 666, 37 Atl. 365, 37 L. R. A. 449. [Cited and annotated in 13 L. R. A. (N. S.) 278, on character of purchase of standing timber to be removed within specified period.]

(b) An agreement by a landlord, who permits the tenant to remain as a yearly tenant, with right to notice, to permit the tenant to erect buildings on the premises, the buildings to be paid for by the landlord on the vacation of the premises, is not an agreement in respect to an interest in or concerning land, within the statute of frauds.—*South Baltimore Co. v. Muhlback*, 69 Md. 395, 16 Atl. 117, 1 L. R. A. 507.

(c) A sale of any growing produce of the earth, in actual existence at the time of the contract, whether it be in a state of maturity or not, is not a sale of an interest in land. A parol contract for the sale of the peaches

growing in a peach orchard, for a specified sum, to be gathered as they ripen, is valid.—*Purner v. Piercy*, 40 Md. 212. [Cited and annotated in 16 L. R. A. 104, on growing fruit as real or personal property; in 23 L. R. A. 450, on sale or mortgage of future crops; in 23 L. R. A. (N. S.) 1220, as to whether contract for sale of growing crops or reservation thereof by a grantor must be in writing.]

(d) Where timber or other produce of land, or any other thing annexed to the freehold, is specifically sold, whether it is to be severed from the soil by the vendor or taken by the vendee under a special license to enter for that purpose, it is still a sale of goods only.—*Smith v. Bryan*, 5 Md. 141, 59 Am. Dec. 104. [Cited and annotated in 19 L. R. A. 722, on validity of oral sale of standing timber; in 11 L. R. A. (N. S.) 1189, on receipt and acceptance to satisfy statute of frauds as to goods in purchaser's possession at time.]

## § 73.—Interest in or concerning property.

## § 74.—Nature of contract in general.

### Cross-Reference.

See ante, §§ 56, 63-70.

### Annotation.

Parol agreement to take title to real property, sell the same, and divide the proceeds, as affected by the statute of frauds.—8 L. R. A. (N. S.) 1137; 20 L. R. A. (N. S.) 298; 42 L. R. A. (N. S.) 1160, notes.

Contract for the sale of corporate stock as one for the sale of "goods," etc., within statute of frauds.—51 L. R. A. (N. S.) 398, note.

(a) Where an agent assumed charge of the business affairs of his principal for the purpose of selling a patent, and while so employed purchased land with his own funds and on his own credit, at the same time verbally agreeing without consideration that he would sell it to his principal whenever the latter could realize the money from the sale of the patent, such a contract for the sale of the land, being verbal, was within the statute of frauds, and hence null and void.—*Nagengast v. Alz*, 93 Md. 522, 49 Atl. 333.

(b) An action of tort lies for loss resulting from fraudulent representations, though orally made, to induce a purchaser to buy land. The statute of frauds, forbidding the enforcement of oral contracts for the sale of lands, does not apply to such a case.—*Lamm*

*v. Port Deposit Homestead Ass'n*, 49 Md. 233, 33 Am. Rep. 246. [Cited and annotated in 50 L. R. A. 647, on liability of servant or agent for conversion, trespass, or other positive tort against third parties under orders.]

(c) Where an agent buys land for another, who engages to repay the price, such agent can recover the amount paid from his principal without proving a written memorandum of his promise to repay.—*Baker v. Wainwright*, 36 Md. 336, 11 Am. Rep. 495. [Cited and annotated in 5 L. R. A. (N. S.) 124, on legal remedy for breach of oral contract to purchase land for and in name of another; in 9 L. R. A. (N. S.) 934, on necessity that written authority of agent to purchase or sell realty as essential to recovery of compensation.]

(d) Where one person requests another to attend a sale of lands and buy for him, and engages to repay the price which the other may bid, this engagement is not a contract for a purchase of lands within the statute of frauds, but an agreement constituting an agency, and may be proved by parol.—*Baker v. Wainwright*, 36 Md. 336, 11 Am. Rep. 495. [Cited and annotated, see supra.]

#### § 75.—Contracts to devise.

(a) Where plaintiff's uncle orally agreed to devise a child's portion, which would be one-third of his estate, consisting of both realty and personalty, to him, if he would render certain services for the uncle during the remainder of his life, on the uncle's death intestate plaintiff cannot maintain an action against his administrators for one-third of the estate for breach of the contract, since, as it was one for the sale of realty and personalty, it was void, within the statute of frauds.—*Hamilton v. Thirston*, 93 Md. 213, 48 Atl. 709. [Cited and annotated in 49 L. R. A. (N. S.) 16, on necessity of pleading statute of frauds; in 11 L. R. A. (N. S.) 892, on implied agreement to pay for services of relative or member of household; in 37 L. R. A. (N. S.) 642, on right to recover value of services in consideration of contract to convey or devise void by statute of frauds; in 41 L. R. A. (N. S.) 248, on measure of damages for failure to compensate for services by will.]

#### § 76.—Partnership contracts and lands.

##### Annotation.

Applicability of statute of frauds to partnership real estate.—37 L. R. A. (N. S.) 902, note.

#### § 77.—Sales by auction.

##### Cross-References.

As part performance, see post, § 129.

Sale by public outcry on judicial sale, see post, § 78.

(a) There is no difference between a sale of real and personal estate at auction in relation to the statute of frauds. In either case, if the auctioneer inserts in his sale book the purchaser's name, the requisitions of the statute are complied with; the auctioneer being considered, for this purpose, the agent of both parties.—*Singstack v. Harding*, 4 H. & J. 186, 7 Am. Dec. 669.

#### § 78.—Judicial sales.

##### Cross-Reference.

Auction sales in general, see ante, § 77.

(a) Sales of lands by executors, though under a power in the will, being placed by Code 1888, art. 93, §§ 282-284, under the superintendence of the Orphans' Court, are not within the statute of frauds.—*Warehime v. Graf*, 83 Md. 98, 34 Atl. 364. (See *Warfield v. Dorsey*, 39 Md. 299, 17 Am. Rep. 562; Code 1911, art. 93, §§ 290-292.) [Cited and annotated in 36 L. R. A. (N. S.) 928, on auction: right to resell property struck off.]

(b) The statute of frauds does not apply to agreements to purchase land sold by a trustee under a decree in equity, or by a mortgagee under a power expressed in the mortgage; otherwise, as to sales by a sheriff.—*Warfield v. Dorsey*, 39 Md. 299, 17 Am. Rep. 562.

(c) In ejectment by a purchaser at execution sale for possession of the land, in the absence of a deed from the sheriff and his return to the execution, a memorandum in writing of the sale must be produced, to take the case out of the statute of frauds.—*Fenwick v. Floyd*, 1 H. & G. 172.

(d) A sheriff's sale of land being within the statute of frauds, some memorandum in writing is necessary to be made.—*Barney v. Patterson*, 6 H. & J. 182.

#### § 79.—Possession under contract.

##### Cross-References.

See ante, § 71.

Effect of possession as part performance, see post, § 129.

**§ 80.— Receipt of purchase money.***Cross-References.*

See ante, § 71.

As part performance, see post, § 129.

Payment and possession, see ante, § 79.

**VII. SALES OF GOODS.***Cross-References.*

Effect of complete performance, see post, § 139.

Requisites and sufficiency of memorandum, see post, §§ 103, 104, 106-113, 115, 116, 118.

**(A) CONTRACTS WITHIN STATUTE.****§ 81. Statutory provisions.***Annotation.*

See Stat. 29, Car. II., c. 3, § 17 (Alex. Brit. Stat. [Coe's ed.] 692); Code, art. 83, §§ 25, 97.

(a) There may be a perfectly valid transfer of personal property, as between the parties, both at common law and under the statute of frauds, so as to enable the vendee to maintain trover for the property against the vendor, without either an actual delivery or a bill of sale.—*Gough v. Edelen*, 5 Gill 101.

**§ 82. Nature of property.***Cross-References.*

Crops, see ante, § 72.

Sale of emblements and payment of earnest, see post, § 94.

(a) The sale of bank stock is within the statute of frauds of 29 Car. II., c. 3, § 17.—*Colvin v. Williams*, 3 H. & J. 38, 5 Am. Dec. 417. (But see *Webb v. Baltimore & E. S. R. Co.*, 77 Md. 92, 26 Atl. 113. Compare Code, art. 83, §§ 25, 97.) [Cited and annotated in 19 L. R. A. (N. S.) 875, on contract for sale of corporate stock as one for sale of "goods," etc., within statute of frauds.]

**§ 83. Existence and condition of goods.**

(a) The statute of frauds, requiring a contract for sale of goods, wares, and merchandise to be in writing, does not apply where work has to be done by the seller on the article sold before delivery.—*Bagby v. Walker*, 78 Md. 239, 27 Atl. 1033. [Cited and annotated in 54 L. R. A. 718, on acceptance of goods as waiver of delay in delivery; in 30 L. R. A. (N. S.) 324, on purchase of property to be manufactured, adapted, or grown as within statute of frauds.]

(b) A contract for the sale of corn, if by its terms the corn is to be gathered and shucked before delivery, is not within the

statute.—*Rentch v. Long*, 27 Md. 188. [Cited and annotated in 14 L. R. A. 233, on purchase of property to be manufactured, adapted, or grown, as within statute of frauds.]

(c) A contract to deliver wheat at a future period, which wheat, at the time of the contract, is unthreshed, is not within the provisions of the statute of frauds relative to the sale of goods, wares, and merchandise.—*Eichelberger v. McCauley*, 5 H. & J. 213, 9 Am. Dec. 514. [Cited and annotated in 14 L. R. A. 233, on purchase of property to be manufactured, adapted, or grown, as within statute of frauds.]

**§ 84. Nature of contract.***Cross-Reference.*

Sale or manufacture, see ante, § 83.

(a) A subscription for stock is not a contract for the sale of goods, within the meaning of the seventeenth section of the statute of frauds.—*Webb v. Baltimore & E. S. R. Co.*, 77 Md. 92, 26 Atl. 113. [Cited and annotated in 19 L. R. A. (N. S.) 875, on contract for sale of corporate stock as one for sale of "goods," etc., within statute of frauds.]

(b) An agreement to mortgage personal property alone to secure a debt due from one contracting party to the other, to be performed forthwith, is not affected by the statute of frauds, although it is otherwise as to an agreement to mortgage real estate.—*Alexander v. Ghiselin*, 5 Gill 138. [Cited and annotated in 30 L. R. A. 125, on injunction against execution sales or other proceedings under final process.]

(c) A verbal agreement for the sale of goods to be delivered at a future time is as much within the statute as a sale by which the title is intended to pass in præsenti.—*Newman v. Morris*, 4 H. & McH. 421. [Cited and annotated in 14 L. R. A. 230, on purchase of property to be manufactured, adapted, or grown, as within statute of frauds.]

**§ 85. Nature and amount of price.****§ 86. Separate articles included in same transaction.****(B) ACCEPTANCE OF PART OF GOODS.****§ 87. Statutory provisions.****§ 88. Time for acceptance and receipt.**

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 89. Acceptance in general.

#### Cross-Reference.

Delivery to carrier as delivery and acceptance of goods, see post, § 90.

(a) On an issue as to whether the purchaser of goods had accepted and received them within the statute of frauds, it appeared that, when the shipment arrived, the purchaser paid the freight both ways, and at once reshipped the goods to the seller. *Held*, that such facts did not show such acceptance, but the question was whether there had been an acceptance with an intention to take possession as owner.—*Jarrell v. Young, Smyth, Field Co.*, 105 Md. 280, 66 Atl. 50. [Cited and annotated in 34 L. R. A. (N. S.) 323, on right to testify as to own intent; in 34 L. R. A. (N. S.) 642, on competency of prosecuting witness in trial for obtaining property by false pretenses to testify defendant's statements induced him to part with property; in 35 L. R. A. (N. S.) 820, on sale of, or agreement to sell, commercial paper to one primarily liable thereon; in 35 L. R. A. (N. S.) 1039, on delivery to carrier as satisfying statute of frauds; in 37 L. R. A. (N. S.) 590, on right of owner of baggage to testify as to value in action for loss; in 41 L. R. A. (N. S.) 2, on admissibility of vendor's declarations out of court, as to purpose in making transfer attacked as fraudulent.]

(b) In an action for the price of the goods, it was error not to permit defendant to testify that he did not at the time intend to receive and accept the goods as owner.—*Jarrell v. Young, Smyth, Field Co.*, 105 Md. 280, 66 Atl. 50. [Cited and annotated, see supra.]

(c) Where a verbal contract for the sale of growing trees is within the statute of frauds (§ 17), requiring part acceptance, part payment, or a written memorandum, where the consideration exceeds a certain amount, there is a sufficient compliance with the statute where the seller goes with the buyer to the woods, helps to choose a location for the buyer's portable sawmill, points out the lines of the tract whereon the trees are standing, and the buyer fells some of the trees before the seller seeks to rescind the contract.—*Leonard v. Medford*, 85 Md. 666, 37 Atl. 365, 37 L. R. A. 449. [Cited and annotated in 13 L. R. A. (N. S.) 278, on character of purchase of standing timber to be removed within specified period.]

(d) Defendants orally agreed to buy from plaintiff a certain amount of butter grease,

at a certain price per pound, when such grease was in plaintiff's cellar in packages, and after it had been seen by defendants' agent. It appeared, however, that defendants did not examine the grease before removal, but that the agent merely removed the loose heading of some of the packages and inspected the top of such packages, but did not use an augur, or trier, or any other method of probing into the packages. On the day of the sale, defendants by written order directed plaintiff to deliver the grease to a drayman, by whom it was taken to defendants' store. Defendants, on further inspection, declined to accept the grease, on the ground that it was not merchantable, because it contained an undue quantity of salt. *Held*, that the jury could infer from the evidence that there had been an acceptance and actual receipt of the goods, within the meaning of the statute of frauds.—*Hewes v. Jordan*, 39 Md. 472, 17 Am. Rep. 578.

(e) Delivery of goods to a purchaser, and the unpacking of the same by him, do not constitute a sufficient acceptance, within the statute of frauds, if it appear that the vendee had the goods in his possession for no greater time than was necessary to enable him to examine their quantity and quality.—*Hewes v. Jordan*, 39 Md. 472, 17 Am. Rep. 578.

(f) The statute of frauds super-adds to the delivery, which the common law requires to constitute a sale, an acceptance of the goods or some part of them by the purchaser.—*Jones v. Mechanics Bank*, 29 Md. 287, 96 Am. Dec. 533. [Cited and annotated in 22 L. R. A. 426, on passing of title by delivery to carrier for transportation to consignee or vendee; in 35 L. R. A. (N. S.) 1041, on delivery to carrier as satisfying statute of frauds; in 36 L. R. A. (N. S.) 77, on purchaser's offer to sell to third person as acceptance satisfying statute of frauds.]

(g) M. verbally agreed with J. to buy 200 barrels of apples, at \$10 per barrel, and directed them to be sent to a schooner, to be by that vessel forwarded to him at C. J. did not have the apples at the time, but subsequently obtained 150 barrels, which were delivered on board the schooner, and J. received from the mate a receipt therefor. Upon the arrival of the vessel at C., the

apples being in a damaged condition, M. refused to receive them, and notified J., through the supercargo of the vessel, of his refusal to receive them. *Held*, that there was no acceptance and receipt of the apples by M. under § 17 of the statute of frauds, and that the fact that M. offered to sell the apples, in anticipation of their arrival, did not amount to such assertion of ownership over them as to constitute an acceptance under the statute.—*Jones v. Mechanics Bank*, 29 Md. 287, 96 Am. Dec. 533. [Cited and annotated, see supra.]

(h) The mere designation of a carrier by the buyer, and delivery of goods to, and receipt of them by, him as carrier, does not operate as such acceptance and receipt of the goods as the statute requires.—*Jones v. Mechanics Bank*, 29 Md. 287, 96 Am. Dec. 533. [Cited and annotated, see supra.]

#### § 90. Delivery and receipt.

##### Cross-References.

Delivery to carrier as acceptance of goods, see ante, § 89.

Delivery on Sunday, see "Sunday," § 17.

(a) During negotiations for the sale of cases of canned tomatoes, the seller took from his store shelves three cans, one of which was sampled by the buyer, and, after an agreement was reached, the buyer took the other two cans away. *Held*, that, the bulk sold not being diminished by the samples so delivered, such samples did not constitute a part of the goods sold, and a delivery thereof did not satisfy the statute of frauds.—*Richardson v. Smith*, 101 Md. 15, 60 Atl. 612, 70 L. R. A. 321, 109 Am. St. Rep. 552.

(b) Where a seller of tomatoes refused to ship in any other manner than "f. o. b. Aberdeen, sight draft, bill of lading attached," there could be no delivery until payment of the draft, and hence a prior delivery of samples could not be regarded as a symbolical delivery, acceptance, and receipt of the goods sold, within the statute of frauds.—*Richardson v. Smith*, 101 Md. 15, 60 Atl. 612, 70 L. R. A. 321, 109 Am. St. Rep. 552.

(c) Where the buyer agreed to pay for the goods on their delivery, and the goods were shipped to the place of the buyer's

residence on the seller's order, and the buyer refused to pay a draft for the price, there was no such delivery as would take the case out of the statute of frauds, the contract being oral, and the value of the goods being in excess of £10.—*Fört Worth Packing Co. v. Consumers' Meat Co.*, 86 Md. 635, 39 Atl. 746. [Cited and annotated in 35 L. R. A. (N. S.) 1039, 1040, on delivery to carrier as satisfying statute of frauds.]

(d) Defendant contracted to purchase of plaintiffs a quantity of hay, but at the time of the contract there was no memorandum made, or part performance, as required under the statute of frauds. A short time thereafter defendant sent his employees to bale the hay ready for shipment. *Held*, that, in view of further testimony that the hay was to be delivered by plaintiffs to defendant at a certain railroad station after being baled, it was error to instruct the jury that the steps taken to bale the hay constituted a delivery, taking the contract out of the statute of frauds.—*Corbett v. Wolford*, 84 Md. 426, 35 Atl. 1088. [Cited and annotated in 15 L. R. A. (N. S.) 656, on work in fitting up for delivery as taking contract out of statute of frauds.]

(e) A. sold by a written contract of sale certain trees standing upon his land to B., who, having cut and removed some of them, resold the residue to A. by a parol contract. *Held*, that both the original and the resale were sales of "goods," within the seventeenth section of the statute of frauds, but, inasmuch as A. was owner and in possession of the land on which the trees were growing, the resale, eo instante, by force of law, gave possession of the trees to him, and the delivery was perfect.—*Smith v. Bryan*, 5 Md. 141, 59 Am. Dec. 104. [Cited and annotated in 19 L. R. A. 722, on validity of oral sale of standing timber; in 11 L. R. A. (N. S.) 1189, on receipt and acceptance to satisfy statute of frauds as to goods in purchaser's possession at time.]

(f) Where a bill of sale is given, and all the purchase money paid, the question of delivery of personal property sold is immaterial.—*Franklin v. Long*, 7 G. & J. 407. [Cited and annotated in 27 L. R. A. (N. S.) 921, on right to reject goods for breach of warranty; in 27 L. R. A. (N. S.) 926, on purchaser's election to rescind for breach of warranty as affecting recovery against seller.]

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.



**§ 91. Quantity of goods.**

(C) GIVING EARNEST OR PART PAYMENT.

§§ 92-96. (See Analysis.)

**VIII. REQUISITES AND SUFFICIENCY OF WRITING.***Cross-References.*

Pleading writing or other compliance with statute, see post, § 148.

Parol modification of writing, see "Contracts," § 238.

Sufficiency of written authority of broker to buy or sell land, see "Brokers," § 43.

**§ 97. Statutory provisions.****§§ 98-102. Creation or conveyance of estates or interests in real property.***Annotation.*

Who must sign note or memorandum of executory contract for the sale of real property or chattels within the statute of frauds.—28 L. R. A. (N. S.) 680; 43 L. R. A. (N. S.) 410, notes.

**§ 103. Nature and form of memorandum in general.***Cross-Reference.*

See post, §§ 106, 108.

(a) A contract required by the statute of frauds to be in writing cannot be partly in writing and partly in parol.—*Frank v. Miller*, 38 Md. 450.

(b) The answer of a defendant confessing the parol agreement charged in the bill cannot be regarded as a compliance with the statute; for, though he confesses the parol agreement, he may still rely on the statute as a defense.—*Winn v. Albert*, 2 Md. Ch. 169. [Cited and annotated in 49 L. R. A. (N. S.) 27, on necessity of pleading statute of frauds.] (See *Albert v. Winn*, 5 Md. 66.) [Cited and annotated in 11 L. R. A. (N. S.) 595, on postnuptial written contract to confirm antenuptial oral contract relinquishing rights.]

(c) A sheriff's return to a fi. fa., which reports a sale of lands, on his deed to the purchaser under the execution, is a sufficient memorandum in writing within the statute of frauds. It is not necessary that the return should be indorsed on the writ, or the deed executed at the time of the sale.—*Hanson v. Barnes*, 3 G. & J. 359, 22 Am. Dec. 322.

**§ 104. Time of making memorandum.***Cross-Reference.*

See post, § 108.

(a) Where there is no date affixed to the guaranty, so that it is left uncertain whether it may not have been written after the instrument guaranteed was executed, delivered and received as a complete contract, parol proof may be admitted to show "identity of time," that is to say that the guaranty was written and signed, at the time of the execution and delivery of the note.—*Ordeman v. Lawson*, 49 Md. 135. (See *Klosterman v. United Electric & Power Co.*, 101 Md. 29, 60 Atl. 251.)

(b) A sold note, or memorandum of sale, made out and delivered to the purchaser by the broker after the vendor has given express notice of his refusal to ratify the sale, or of a sale to another party, is not a sufficient memorandum of the bargain to bind the vendor.—*Williams v. Woods*, 16 Md. 220.

**§ 105. Contents of memorandum.***Cross-References.*

Admissibility of evidence to aid memorandum, see post, § 158.

Correspondence, see post, § 118.

**§ 106.— In general.**

(a) A. addressed to B. the following letter: "The small note you hold of J. F., for \$292, if you will be so good and renew it for him, I will guaranty the payment of it at 60 days." Held, that this guaranty was sufficient under the statute of frauds, and that A. was liable for the amount of B.'s note; he having failed to pay it.—*Sloan v. Wilson*, 4 H. & J. 322, 7 Am. Dec. 672.

**§ 107.— Designation and description of parties.***Annotation.*

May statute of frauds relating to sales of real property be satisfied by a memorandum which discloses that one of the parties acted for an undisclosed principal.—8 L. R. A. (N. S.) 733, note.

(a) Where an agent sells goods of his principal on account of his principal, and the purchaser accepts a bill of parcels stating him to be the purchaser, it is a sufficient memorandum of the contract, within the statute of frauds, though the name of the principal does not appear, and though it be

made out in the name of the agent.—*Batturs v. Sellers*, 5 H. & J. 116, 9 Am. Dec. 492.

**§ 108.—Statement of consideration.**

*Annotation.*

"Where the action, suit, or other proceeding is brought for the purpose of charging any person on a special promise to be answerable for the debt, default, or miscarriage of another person, it shall not be necessary to show that the consideration for such promise is in writing." Code, art. 35, § 38 (act 1900, c. 362, § 35A).

(a) Prior to the passage of act 1900, c. 362, § 35A, it was well settled that in the case of a collateral promise to answer for the debt or default of another, it was necessary that the consideration as well as the promise should appear from the writing.—*Klosterman v. United Electric & Power Co.*, 101 Md. 29, 60 Atl. 251.

(b) Prior to the passage of act 1900, c. 362, § 35A, it was not necessary that the consideration should be stated in express terms, but it was sufficient that it might be collected or implied with certainty from the instrument itself.—*Klosterman v. United Electric & Power Co.*, 101 Md. 29, 60 Atl. 251; *Ordeman v. Lawson*, 49 Md. 135. [Cited and annotated in 28 L. R. A. (N. S.) 876, 877, on relief from mistake of law as to effect of instrument.]

(c) The words "for value received," contained in a written guaranty, express the consideration sufficiently to satisfy the statute of frauds.—*Emerson v. C. Aultman & Co.*, 69 Md. 125, 14 Atl. 671. [Cited and annotated in 25 L. R. A. (N. S.) 809, on person to whom acknowledgment or new promise must be made to toll statute or remove bar of limitations.]

(d) A. wrote her name across the back of a single bill nine months after its delivery. The payee sued A. as upon a guaranty, and at the trial wrote over her signature matter purporting to be a contract of guaranty, and offered testimony tending to show the contract between himself and the maker of the bill to have been incomplete before the indorsement, and that until then the bill had been delivered provisionally only, and that he parted with his money in consideration of the above. Held, that the statute of frauds was a bar to the suit, since the mere blank indorsement is not a sufficient writing,

not showing the consideration, and the subsequent writing was not signed by the defendant.—*Culbertson v. Smith*, 52 Md. 628, 36 Am. Rep. 384.

(e) While the statute of frauds requires that the written contract of guaranty shall show the consideration on which it rests, it is not necessary that the consideration be stated in express terms. It is sufficient if it can be collected or implied with certainty from the instrument itself.—*Ordeman v. Lawson*, 49 Md. 135. [Cited and annotated, see supra.]

(f) Where the consideration of a guaranty, as well as the promise, must appear from the writing, a guaranty of a note, written on a separate paper, must refer with certainty to a note, before the consideration of the note can support the guaranty.—*Ordeman v. Lawson*, 49 Md. 135. [Cited and annotated, see supra.]

(g) Where a guaranty expressly refers to a previous agreement between the principal and the guarantee, which is executory in its character and embraces prospective dealings between the parties, it purports on its face and by necessary construction a sufficient consideration.—*Roberts v. Woven Wire Mattress Co.*, 46 Md. 374. [Cited and annotated in 16 L. R. A. (N. S.) 359, 364, 367, on necessity for notice of acceptance to bind guarantor.]

(h) A written guaranty reading: "We, the undersigned, take pleasure in recommending S. to D. We also severally agree to become responsible for \$350 to said D., to be forthcoming in thirty days after the final delivery of the work."—does not sufficiently set forth the consideration thereof to satisfy the statute of frauds.—*Deutsch v. Bond*, 46 Md. 164.

(i) Under the statute, 29 Car. II., c. 3, § 4, both the promise to pay the debt of another and the consideration must be in writing.—*Wyman v. Gray*, 7 H. & J. 409; *Elliott v. Giese*, Id. 457; *Nabb v. Koontz*, 17 Md. 283; *Hutton v. Padgett*, 26 Md. 228. [Cited and annotated in 16 L. R. A. (N. S.) 360, on necessity for notice of acceptance to bind guarantor.] *Beasten v. Hendrickson*, 44 Md. 609.

(j) Failure to set out direct consideration in guaranty is not available, when the con-

sideration can be gathered from the reference in the guaranty to the original contract.—*Mitchell v. McCleary*, 42 Md. 374. [Cited and annotated in 16 L. R. A. (N. S.) 358, 362, on necessity for notice of acceptance to bind guarantor.]

(k) A guaranty in these words: "I hereby hold myself responsible to A. and B. to the amount of \$2,000 for any drafts they have accepted, or may hereafter accept, for L. Witness my hand this 16th of May, 1860. [Signed] H."—sets forth a sufficient consideration, as to subsequent acceptances, to satisfy the statute of frauds; the liability of the acceptors to suffer loss being a good consideration.—*Hutton v. Padgett*, 26 Md. 228. [Cited and annotated, see supra.]

(l) A note given for the debt of a third party must show, under the statute of frauds, on its face, a good consideration moving to the maker.—*Sumwalt v. Ridgely*, 20 Md. 108. [Cited and annotated in 19 L. R. A. 679, on personal liability of officers on note made for corporation; in 20 L. R. A. 709, on extrinsic evidence to show who is liable as maker of note; in 21 L. R. A. (N. S.) 1048, 1052, on liability of principal on negotiable paper executed by agent; in 42 L. R. A. (N. S.) 34, on liability of one signing contract in representative capacity.]

(m) Where the guaranty is indorsed on a note before delivery thereof to the payee, the consideration expressed in the note is sufficient to sustain the guaranty.—*Nabb v. Koontz*, 17 Md. 283.

(n) Where both the engagement and the consideration are in writing the agreement is in strict conformity with the statute.—*Brooks v. Dent*, 1 Md. Ch. 523.

(o) The words "for value received," in a contract, sufficiently express the consideration within the requirement of the statute of frauds.—*Edelen v. Gough*, 5 Gill 103.

(p) The statute of frauds on the subject of consideration, in agreements to pay the debts of third parties, has no application to instruments under seal.—*Edelen v. Gough*, 5 Gill 103.

#### § 109.—Subject-matter in general.

#### § 110.—Description of lands.

##### Cross-Reference.

Statement of consideration and description of lands, see ante, § 108.

##### Annotation.

Description of property by local appellation.—36 L. R. A. (N. S.) 154, note.

Sufficiency of description in land contract which gives right to select particular tract to be conveyed.—34 L. R. A. (N. S.) 147, note.

(a) A description of property as "section 1, lots Nos. 1 to 24, inclusive, Stein's addition to Galesville," taken in connection with plats showing the location of these lots and which were exhibited at the time of the purchase, is sufficient under the statute of frauds.—*Scarlett v. Stein*, 40 Md. 512.

(b) A description of land as "a farm, on which is a gristmill, sawmill, and milling apparatus, containing 230 acres," is too uncertain to satisfy the statute of frauds.—*Taney v. Bachtell*, 9 Gill 205.

#### § 111.—Description of goods.

(a) A memorandum of sale which omits one of the terms of the verbal agreement—that the goods sold "should be as per sample delivered or equal in quality to sample delivered"—is insufficient under the statute of frauds, and will not support an action based thereon for failing to deliver the goods.—*Fisher v. Andrews*, 94 Md. 46, 50 Atl. 407.

#### § 112.—Statement of price.

#### § 113.—Statement of terms and conditions.

##### Annotation.

Necessity of specifying time of payment of purchase price in contract or memorandum for the sale of real property.—33 L. R. A. (N. S.) 84, note.

(a) However sufficient as a memorandum of a sale to satisfy the statute of frauds might be, a paper purporting merely to be a statement of account charging M. with \$4,000 as the price of lots, and crediting him with \$250, and containing a printed direction, signed by him, for the deed to be made to him, is not such, where the money was paid and such instrument given after the promise to M. that a contract of sale of a particular character containing the full terms of the proposed purchase was to be executed.—*Colonial Park Estates v. Massart*, 112 Md. 648, 77 Atl. 275.

(b) Under the statute of frauds requiring a certain contract of sale to be in writing, a verbal agreement for the extension of time for the deliveries of goods fixed by the

written contract is not admissible in evidence in an action for an alleged breach of such contract.—*Walter v. Victor G. Bloede Co.*, 94 Md. 80, 50 Atl. 433.

(c) A memorandum of sale which omits one of the terms of the verbal agreement—"to pay net cost and upon delivery"—is insufficient under the statute of frauds, and will not support an action based thereon for failing to deliver the goods.—*Fisher v. Andrews*, 94 Md. 46, 50 Atl. 407.

(d) It is not necessary, in the written memorandum of the sale of goods required by the statute of frauds, that the time of delivery should be stated, provided no time was fixed in the parol agreement.—*Kriete v. Myer*, 61 Md. 558.

(e) F. agreed to pay certain notes of K. & Co., and gave a written memorandum to that effect, in which the notes so to be paid were not specified with any accuracy or particularity. Held, that the memorandum was altogether insufficient to take the agreement out of the statute of frauds; parol evidence being required to show what notes were meant.—*Frank v. Miller*, 38 Md. 450.

(f) If the agreement is that "the paper shall be satisfactory to the seller," the memorandum of sale will be insufficient if it omit such provision.—*Williams v. Woods*, 16 Md. 220.

(g) An entry of a sale of coffee, not stating any credit, is not an insufficient memorandum, for want of a specification of the length of credit, when by mercantile usage such a sale is a sale on six months' credit. The entry, in connection with the usage, is an entry of a sale with six months' credit.—*Williams v. Woods*, 16 Md. 220.

#### § 114. Signature of memorandum.

##### Cross-References.

Instrument creating or conveying interest in real property, see ante, § 101.

Oral acceptance of written offer, see ante, § 103.

#### § 115.—In general.

##### Annotation.

Who must sign note or memorandum of executory contract for the sale of real property or chattels within the statute of frauds.—28 L. R. A. (N. S.) 680; 43 L. R. A. (N. S.) 410, notes.

(a) The vendee in a contract for the sale of

land may maintain specific performance, though the contract was signed only by the vendor.—*Engler v. Garrett*, 100 Md. 387, 59 Atl. 648. [Cited and annotated in 28 L. R. A. (N. S.) 696, as to who must sign memorandum of executory sale contract within statute of frauds.]

(b) A writing made by the salesman of the seller, at the time the order was given, containing the buyer's name and a statement of the items and prices, but not signed, is not a memorandum, within the statute of frauds.—*McElroy v. Seery*, 61 Md. 389, 48 Am. Rep. 110.

(c) Under the statute of frauds, requiring a memorandum of a contract of sale to be signed by the party to be charged, a printed letter head above the memorandum is a sufficient signature, if the jury find that it was adopted and appropriated by the defendants as such.—*Drury v. Young*, 58 Md. 546, 42 Am. Rep. 343. [Cited and annotated in 5 L. R. A. (N. S.) 436, on matter following signature as part of contract; in 37 L. R. A. (N. S.) 353, on statute of frauds: printed or stamped signature.]

#### § 116.—By agent.

##### Cross-Reference.

Instrument creating or conveying interest in real property, see ante, § 102.

##### Annotation.

Ratification of agent's unauthorized contract for the purchase or sale of real property as affected by the statute of frauds.—38 L. R. A. (N. S.) 783, note. Necessity that authority of agent to purchase or sell real property be in writing to enable him to recover compensation for his services.—9 L. R. A. (N. S.) 933, note.

(a) Where an agent, who was orally appointed by a married woman with her husband's sanction, purchased land at auction, and the auctioneer made a memorandum in his book of the purchaser's name and terms of sale, the purchase is binding on the woman, as the transaction is not within the statute of frauds.—*Moore v. Taylor*, 81 Md. 644, 32 Atl. 320. [Cited and annotated in 38 L. R. A. (N. S.) 38, on what is a marketable title.]

(b) A broker, having made a contract of sale, may authorize his clerk to make and sign an entry or memorandum thereof, under the broker's direction and in his presence, so as to bind the parties named in the

contract.—*Williams v. Woods*, 16 Md. 220.

(c) An auctioneer is the agent of both the seller and the buyer, and his entry of the buyer's name on a book or memorandum containing the particulars of the contract is a sufficient signing within the statute of frauds.—*Ijams v. Hoffman*, 1 Md. 423.

(d) A clerk to an auctioneer may become the agent of the purchaser with the latter's assent, which may be implied from his acquiescence in the acts of the clerk, so that the latter's signature to a memorandum of the auction sale will be binding on the purchaser.—*Ijams v. Hoffman*, 1 Md. 423.

(e) An entry, made by a person who was the clerk of the plaintiff at an execution sale, but was not the clerk of the auctioneer, will not satisfy the requisitions of the seventeenth section of the statute of frauds.—*Ijams v. Hoffman*, 1 Md. 423.

(f) A memorandum of an auction sale, made by a clerk of the vendor, who is not shown to have been a clerk of the auctioneer or agent of the vendee, is not a sufficient compliance with the statute of frauds.—*Ijams v. Hoffman*, 1 Md. 423.

(g) An agent employed by a corporation to sell its property, although a member of the corporation, may be also agent for the party who contracts with the corporation, so as to make the memorandum required by the statute of frauds.—*Stoddert v. Vestry of Port Tobacco Parish*, 2 G. & J. 227. [Cited and annotated in 22 L. R. A. 210, on right of pew holders.]

(h) A bond, which recited the names of the parties to a contract for the sale of land and the terms of the contract, and contained a condition to secure its performance, was prepared and written by the vendee, who was also the obligee of the bond, executed by an agent of the vendor, and delivered by him to the vendee. Held, that there was a sufficient signing within the fourth section of the statute of frauds.—*Higdon v. Thomas*, 1 H. & G. 138. [Cited and annotated in 20 L. R. A. 102, on parol evidence as to consideration of deed.]

### § 117. Delivery of memorandum.

(a) It is not essential to the validity of the memorandum of sale, required by the statute of frauds to be made and signed by the

party to be charged, that it should be delivered to the other party.—*Drury v. Young*, 58 Md. 546, 42 Am. Rep. 343. [Cited and annotated, see supra, § 115.]

### § 118. Separate writings.

#### Cross-Reference.

Letters by one party, see ante, § 103.

(a) If the signature to the memorandum of sale required by the statute of frauds is not sufficient, a letter, directed to plaintiff and signed by defendants, saying it is impossible to furnish the goods, may be taken with the defective memorandum, and will supply the defect.—*Drury v. Young*, 58 Md. 546, 42 Am. Rep. 343. [Cited and annotated, see supra, § 115.]

(b) A telegraphic message, containing a promise to guaranty the debt of another, is a sufficient compliance with the requirement of the statute of frauds that such a promise shall be in writing.—*Smith v. Easton*, 54 Md. 138, 39 Am. Rep. 355. [Cited and annotated in 44 L. R. A. 438, on admissibility of reply telegram on behalf of addressee; in 50 L. R. A. 240, 242, 252, on contract by telegrams within statute of frauds; in 33 L. R. A. (N. S.) 177, on effect of extrinsic promise to sign or indorse note or bill.]

(c) A paper signed by a party proposing to convey all the property cannot be connected by parol with another paper, not signed, for the purpose of designating the property designed to be conveyed, and thus escape the prohibitions of the statute of frauds.—*Moale v. Buchanan*, 11 G. & J. 314. [Cited and annotated in 3 L. R. A. (N. S.) 796, on taking possession as part performance of oral contract as to realty; in 18 L. R. A. (N. S.) 616, as to whether an extrinsic document, not referred to in memorandum of sale of realty, may be resorted to in aid of defective description to satisfy statute of frauds; in 28 L. R. A. (N. S.) 877, 878, on relief from mistake of law as to effect of instrument.]

## IX. OPERATION AND EFFECT OF STATUTE.

#### Cross-References.

Establishment of boundary followed by possession, see ante, § 70.

Marriage as execution of contract to convey in consideration of marriage, see ante, § 6.

Dependent on form of action, see "Action," § 37.

Parol agreements void under statute as consideration for conveyance, see "Fraudulent Conveyances," § 94.

Parol partition, see "Partition," § 5.  
Specific performance of oral contracts partly performed, see "Specific Performance," §§ 41-47.

Subsequent purchaser from same vendor as bona fide purchaser where prior contract is in parol, see "Vendor and Purchaser," § 228.

### § 119. Operation as to rights or remedies in general.

#### Cross-Reference.

Enforcement in equity, see post, § 142.

#### Annotation.

Nature of tenancy created by entry under lease void under statute of frauds.—42 L. R. A. (N. S.) 648, note.

Effect at law of entry under lease void under statute of frauds.—42 L. R. A. (N. S.) 654, note.

(a) It has always been understood that the judges under the old government laid it down as a general rule that all statutes (English) for the administration of justice, whether made before or after the charter, so far as they were applicable, should be adopted.—*Sibley v. Williams*, 3 G. & J. 52. [Cited and annotated in 22 L. R. A. 510, on adoption of common law in United States.]

(b) The statute (29 Car. II., c. 3) passed in 1677 was not effective in Maryland in 1679, not having been published there.—*Clayland v. Pearce*, 1 H. & McH. 29. (See Alex. Brit. Stat. [Coe's ed.] 689.)

### § 120. What law governs transactions.

#### Cross-Reference.

Pleading law of another state, see post, § 153.

### § 121. Construction of statute in general.

(a) There may be a perfectly valid transfer of personal property, as between the parties, both at common law and under the statute of frauds, so as to enable the vendee to maintain trover for the property against the vendor, without either an actual delivery or a bill of sale.—*Gough v. Edelen*, 5 Gill 101.

§§ 122-124. (See Analysis.)

### § 125. Validity and enforcement of contracts in general.

#### Cross-Reference.

Promise to reduce contract to writing, see post, § 126.

(a) Plaintiff's part performance of an oral

contract void within the statute of frauds will not entitle him to recover in an action for the breach, since the doctrine of part performance is peculiar to equity, and is not regarded at law to take a case out of the statute.—*Hamilton v. Thirston*, 93 Md. 213, 48 Atl. 709. [Cited and annotated in 49 L. R. A. (N. S.) 16, on necessity of pleading statute of frauds; in 11 L. R. A. (N. S.) 892, on implied agreement to pay for services of relative or member of household; in 37 L. R. A. (N. S.) 642, on right to recover value of services in consideration of contract to convey or devise void by statute of frauds; in 41 L. R. A. (N. S.) 248, on measure of damages for failure to compensate for services by will.]

### § 126. Promise to reduce agreement to writing.

#### Annotation.

Sufficiency of offer and acceptance without execution of contemplated formal instrument, as contract.—29 L. R. A. 431, note.

(a) Plaintiffs alleged that defendant was the owner or lessee of Sparrow's Point, and agreed with them that, if they would purchase the steamer O., defendant would execute to them a contract for the term of three years, for the exclusive carriage by them of passengers and freight between B. and Sparrow's Point; that plaintiffs relied on the agreement, and purchased the O., but that defendant refused to execute the contract. Held, that the case was within the statute of frauds.—*Green v. Pennsylvania Steel Co.*, 75 Md. 109, 23 Atl. 139.

### § 127. Writing subsequent to oral agreement.

#### Cross-Reference.

Mechanic's lien on interest of purchaser in possession under oral contract, see "Mechanics' Liens," § 18.

### § 128. Effect on collateral or subsequent contracts.

(a) An agreement respecting lands within the fourth section of the statute of frauds must itself be in writing; but a trust within the seventh section need not be constituted, but merely proved, by some writing.—*Albert v. Winn*, Md. 66. (See Stat. 29 Car. II., §§ 4, 7; Alex. Brit. Stat. [Coe's ed.] 690.) [Cited and annotated in 11 L. R. A. (N. S.) 595, on postnuptial written contract to confirm antenuptial oral contract relinquishing rights.] See *Winn v. Albert*, 2 Md. Ch. 169. [Cited and annotated in 49 L. R. A. (N. S.)

27, on necessity for pleading statute of frauds.]

### § 129. Part performance in general.

#### Cross-References.

Part performance of agreements relating to land signed by only one party, see ante, § 115.

Part performance of marriage contract, see ante, § 6.

Payment of purchase money as exception provided by statute, see ante, § 80.

Possession of tenant as creating tenancy from year to year or at will, see ante, § 123.

Possession under contract as exception provided by statute, see ante, § 79.

Readiness and willingness to perform contract, see post, § 132.

#### Annotation.

Delivery to carrier as satisfying statute of frauds.—35 L. R. A. (N. S.) 1039, note.

Part performance under parol lease to satisfy statute of frauds.—49 L. R. A. (N. S.) 113, note.

Taking possession of real property as part performance to satisfy statute of frauds.—3 L. R. A. (N. S.) 790, note.

(a) The statute of frauds does not apply to any contract (not in regard to real estate) capable of being performed in less than a year; and the performance by one of the contracting parties of his part within that time will take the contract without the provisions of the statute.—*Horner v. Frazier*, 65 Md. 1, 4 Atl. 133.

(b) Defendant's testator made an oral contract with plaintiff to purchase land, and on its resale to pay plaintiff the increase over the original purchase price, in consideration of which plaintiff agreed to pay an old debt he owed testator, and to pay the taxes, insurance, etc., on the land, and keep it in good repair. Held, that, though the contract was void under the statute of frauds, its performance by plaintiff was sufficient to uphold a subsequent promise by testator, after a resale of the land, to pay plaintiff the amount realized over the original purchase price.—*Pool v. Horner*, 64 Md. 131, 20 Atl. 1036.

(c) A. agreed by parol to take a house of B. in part settlement of an account. The deed was executed, acknowledged, and left for A. with a justice of the peace. A. refused to receive it because of the tax re-

ceipts not having been left with it, and for no other reason. It was agreed that arrears of taxes were to be paid by B., but it was uncertain whether this was a condition precedent or not. The parties afterwards settled their accounts, the price of the house being allowed by A., and the balance paid to him in cash, and he executed a receipt in full; he then asking for the receipted tax bills, which B. promised should be sent him. A. took an order for the rent, collected it for 14 months, paid a year's ground rent, offered the house for sale at auction, withdrew it because of the insufficient bids, and promised the mortgagee to pay the interest. Held, that the contract had become executed, and was not within the operation of the statute of frauds, and could not be repudiated by A.—*Bechtel v. Cone*, 52 Md. 698.

(d) Possession, improvements, and payment of taxes and insurance for many years are a sufficient part performance to take a parol gift of land out of the statute.—*Hardesty v. Richardson*, 44 Md. 617, 22 Am. Rep. 57. [Cited and annotated in 53 L. R. A. 344, on right to compensation for bona fide improvements on land under oral contract or gift.]

(e) An act of part performance, which is relied on to relieve a contract from the operation of the statute of frauds, must in itself furnish unequivocal evidence of the identity of that contract with the particular contract charged in the bill, and must be of such a nature that a refusal to execute the agreement would inflict upon the party performing the act an injury amounting to a fraud.—*Semmes v. Worthington*, 38 Md. 298. [Cited and annotated in 49 L. R. A. (N. S.) 16, on necessity of pleading statute of frauds; in 44 L. R. A. (N. S.) 747, 748, 750, on specific performance of contract to leave property in consideration of services or support; in 14 L. R. A. 862, 863, on agreement to pay money or give property after death; in 3 L. R. A. (N. S.) 812, on taking possession as part performance of oral contract as to realty; in 4 L. R. A. (N. S.) 411, on sufficiency of evidence to overcome denial of contract.]

(f) If one who is already in possession of land as tenant verbally contracts with the owner for a new term, his merely continuing in possession after the making of the alleged contract is not an act of part performance, within the meaning of the statute of frauds,

so as to justify a decree for a lease according to the contract.—*Rosenthal v. Freeburger*, 26 Md. 75. [Cited and annotated in 49 L. R. A. (N. S.) 114, 117, 118, on part performance under parol lease to satisfy statute of frauds; in 3 L. R. A. (N. S.) 811, on taking possession as part performance of oral contract as to realty.]

(g) Where a bill was filed for the specific performance of a contract for the sale of land, alleging that A. gave the land into B.'s possession in payment of a debt, and that B. sold it to C., and C. to D., and D. to the complainant, and the answer denied the contract and sale, and pleaded the statute of frauds, and the testimony showed a verbal agreement of A. to give the land to B., that he told him to take possession, that B. walked over the land and offered it for sale, and that it was sold as alleged in the bill, and the land was uninclosed at the time, such contract was held within the statute of frauds, and such as could not be enforced by decree, without evidence of some act done in part performance of it.—*Frostburg Coal Co. v. Thistle*, 20 Md. 186. [Cited and annotated in 3 L. R. A. (N. S.) 816, on taking possession as part performance of oral contract as to realty.]

(h) Parol evidence that a father repeatedly stated that he had given to his son a certain farm, and that the son took possession of the same and improved it, and otherwise exercised the rights of an owner, will justify the inference that a contract existed between the parties whereby the son was to have the farm if he would improve it, and that, in pursuance of such contract, he took possession and expended his money upon it, so as to take the case out of the statute of frauds.—*Haines v. Haines*, 6 Md. 435. [Cited and annotated in 32 L. R. A. 597, on validity of transactions as to expectancy between heir and ancestor; in 53 L. R. A. 344, on right to compensation for bona fide improvements on land under oral contract or gift.]

(i) The acts of part performance relied upon to take the case out of the statute of frauds, must be clear and definite, and refer exclusively to the alleged agreement.—*Mundorff v. Kilbourn*, 4 Md. 459. [Cited and annotated in 14 L. R. A. 862, on agreement to pay money or give property after death.]

(j) Where part performance is relied on to take the case out of the statute of frauds,

the act performed should in itself tend to show, not only that there has been an agreement, but also to throw light on the nature of that agreement, so that neither the fact of the agreement nor even the nature of it rests solely on parol evidence; the parol evidence being only auxiliary to the internal evidence afforded by the circumstances of the case itself.—*Stoddert v. Tuck*, 4 Md. Ch. 475.

(k) It is not enough that the act relied on is evidence of some agreement; but it must be unequivocal and satisfactory evidence of the contract charged in the bill.—*Beard v. Linthicum*, 1 Md. Ch. 345.

(l) To take a parol agreement out of the statute of frauds, on the ground of part performance, the party must show acts unequivocally referring to, and resulting from, the agreement set up, such as the party would not have done, unless on account of that very agreement and with a view to its performance; and the agreement set up must be proved to exist, and appear to be the same with the one partly performed.—*Shepherd v. Shepherd*, 1 Md. Ch. 244.

(m) Where delivery of possession is relied upon, it is indispensable that such delivery to, and taking possession by, the defendant, is referable to the contract alleged in the bill, and not to a distinct or different title.—*Owings v. Baldwin*, 1 Md. Ch. 120.

(n) Part performance of a contract is not regarded as a compliance with the statute of frauds, but as taking the case entirely out of the statute.—*Owings v. Baldwin*, 1 Md. Ch. 120.

(o) Where a son gave his mother a receipt for a sum of money expressed to be for full payment of his distributive share of his father's estate, which was shown to have been intended as a consideration for a conveyance of land from her to him, and he took possession of the land, made improvements, paid taxes, and never received his share of his father's estate, the promise of his mother to convey was removed from the statute of frauds.—*Shepherd v. Bevin*, 9 Gill 32. [Cited and annotated in 53 L. R. A. 344, on right to compensation for bona fide improvements on land under oral contract or gift; in 14 L. R. A. (N. S.) 319, on refusal of specific performance of land contract for inadequacy of consideration.]



(p) A part performance of a contract for the sale of lands, not in writing, may be proved by parol, in order to take it out of the operation of the statute of frauds; but there must be full and satisfactory evidence, both of the terms of the agreement and of the part performance.—*Hall v. Hall*, 1 Gill 383.

(q) Possession taken under an oral contract for the sale of realty is part performance, within the meaning of the statute of frauds.—*Moale v. Buchanan*, 11 G. & J. 314. [Cited and annotated in 3 L. R. A. (N. S.) 796, on taking possession as part performance of oral contract as to realty; in 18 L. R. A. (N. S.) 616, as to whether an extrinsic document, not referred to in memorandum of sale of realty, may be resorted to in aid of defective description to satisfy statute of frauds; in 28 L. R. A. (N. S.) 877, 878, on relief from mistake of law as to effect of instrument.]

(r) Taking possession of property and granting indulgence is a sufficient part performance to take out of the statute a parol agreement to convey land to trustees for creditors in consideration of the indulgence.—*Moale v. Buchanan*, 11 G. & J. 314. [Cited and annotated, see *supra*.]

(s) Where there has been a part performance sufficient to take a contract out of the statute, had it been in parol, it can make no difference that the parties attempted to put it in writing and failed.—*Moale v. Buchanan*, 11 G. & J. 314. [Cited and annotated, see *supra*.]

(t) A bill for the conveyance of land alleged that M. had a life estate in certain land, the remainder in fee being in C.; that C. sold to M. all his interest in the land; that the purchase money was paid by M., who retained the possession of the land until his death; and that his representatives (complainants) afterwards retained possession. The testimony proved a contract between C. and M. for part of the land, that the purchase money was paid by M., and the possession of the land permitted to be retained by him under the contract. *Held*, that permitting the possession to be retained by M., under the circumstances, was equivalent to actual delivery, and, with the payment of the purchase money, took it out of the statute of frauds.—*Drury v. Conner*, 6 H. & J. 288.

(u) A parol contract between a father-in-law and a son-in-law that the former would give real estate to the son of the latter in consideration of the son-in-law paying one-half the value of the land is within the statute of frauds, and this notwithstanding possession was held by the son-in-law and part of the purchase money was paid.—*Wingate v. Dail*, 2 H. & J. 76.

### § 130. Contracts in part within statute.

*Cross-Reference.*

Part performance, see post, §§ 133, 137.

### § 131. Modification of contract.

*Annotation.*

Statute of frauds as affecting parol variation of instrument.—28 L. R. A. (N. S.) 876, note.

Parol modification of original contract required to be in writing.—4 L. R. A. (N. S.) 980, note.

(a) Where a written contract for the sale of goods has been part performed by delivery of a part of the goods purchased, it becomes immaterial whether the contract was in writing, and a subsequent parol modification of it is not within the statute.—*Kribs v. Jones*, 44 Md. 396. [Cited and annotated in 4 L. R. A. (N. S.) 981, on parol modification of contract required to be in writing.]

### § 132. Readiness and willingness to perform contract.

### § 133. Contracts performed as to part within statute.

*Cross-References.*

Executed contracts, see post, § 139.

Possession under contract, see ante, § 79.

Possession under parol partition, see "Partition," § 5.

(a) A. and B. having been appointed trustees to sell certain property, in a case in which they, as administrators of C., were complainants, and D. was defendant, sold the same to the said D. By the auditor's report in that cause, which was confirmed by the chancellor, the sum of \$1,208.76 was assigned to the said D. After the death of D., upon a bill by her administrator against the said trustees to enforce the payment of this sum, it appearing that D., having failed to comply with the terms of the sale, afterwards sold the property to one E., with an agreement that the purchase money should

be applied to the payment of incumbrances and other debts due by D., and that these debts, to which the money was applied by the trustees, exceeded the sum awarded to her by the auditor, it was *held*, that, if the statute of frauds would under any circumstances apply to such an agreement, the acts of part performance by the trustees would take it out of the statute, and that the plaintiff could have no relief upon his bill.—*Frieze v. Glenn*, 2 Md. Ch. 361.

(b) Where a deed is executed and delivered, and possession taken thereunder, it is no defense to an action for the price that the promise to pay therefor was in parol.—*Morgan v. Bitzenberger*, 3 Gill 350. [Cited and annotated in 68 L. R. A. 927, on recital of money consideration in deed as contractual; in 35 L. R. A. (N. S.) 91, on payment by commercial paper.]

(c) It was agreed by parol, between landlord and tenant, that the latter should give up his unexpired term in a lease and certain claims which he had for repairs done to the demised premises, in consideration of which the landlord promised to pay the tenant a certain sum of money; and the tenant actually surrendered on the same day, and the landlord took possession. *Held*, that the agreement being immediately executed, was not void, and that an action by the tenant for the money was maintainable.—*Lamar v. McNamee*, 10 G. & J. 116, 32 Am. Dec. 152.

**§ 134. Contracts performed only as to part not within statute.**

**§ 135.— In general.**

**§ 136.— Agreements not to be performed within one year.**

*Cross-Reference.*

See ante, § 129.

**§ 137.— Agreements relating to real property.**

*Cross-References.*

See ante, § 129.

Effect of part performance of assignment of lease, see "Landlord and Tenant," § 208.

(a) Defendant borrowed money to make part payment of the purchase price of land, and orally agreed to secure the lender by mortgage on the land so purchased. *Held*, in a suit for specific performance, that the

contract came within the statute of frauds, and that the payment of the money by the lender was not such part performance of the contract as would take it out of the statute.—*Washington Brewery Co. v. Carry*, 75 Md. xv, memorandum case, 24 Atl. 151, full report.

(b) W. entered on land as tenant of G., and some months afterwards purchased the land by parol contract. By the terms of the contract the land was to be paid for in limestone quarried thereon, and W. was to have the option of surrendering or retaining the land as he might prefer. W. furnished limestone to G. prior to the contract of sale under an agreement with him, and it did not appear from the evidence whether the limestone furnished subsequently was furnished under that agreement or under the contract of sale. *Held*, that the subsequent deliveries of limestone did not constitute such acts of part performance as took the case out of the statute of frauds.—*Billingslea v. Ward*, 33 Md. 48. [Cited and annotated in 49 L. R. A. (N. S.) 16, on necessity of pleading statute of frauds; in 3 L. R. A. (N. S.) 810, on taking possession as part performance of oral contract as to realty.]

(c) In an action to compel specific performance of an alleged agreement of the respondent to execute a new lease to the complainant, in consideration that the latter would pay a certain increased rent, it was *held* that an allegation of the complainant "that he paid the rent of \$1,500 for the last year as part and parcel of the agreement aforesaid, and in performance and consideration thereof, and not otherwise," was such an allegation of part performance as would take the case out of the statute of frauds.—*Spear v. Orendorf*, 26 Md. 37. [Cited and annotated in 49 L. R. A. (N. S.) 113, 116, 117, 118, 119, on part performance under parol lease to satisfy statute of frauds; in 20 L. R. A. 38, on possession under unexecuted agreement for lease.]

**§ 138. Contracts implied by law on part performance.**

(a) Money paid by plaintiff on the purchase price of lots, there having been no sufficient memorandum of sale to satisfy the statute of frauds, may be recovered.—*Colonial Park Estates v. Massart*, 112 Md. 648, 77 Atl. 275.

(b) Where a wife advanced money to her

husband with which he purchased certain real estate, and orally agreed to convey a portion of the property to her, but the agreement was never performed, and was unenforceable because of uncertainty and for a failure to comply with the statute of frauds, equity had jurisdiction at the suit of the wife against the husband's estate and heirs to decree compensation to the wife to the extent of the purchase money paid and the value of lasting improvements.—*Cross v. Iler*, 103 Md. 592, 64 Atl. 33.

(c) Where plaintiff performed services for his uncle under an oral agreement that the uncle would will him one-third of his estate, consisting of real and personal property, and the uncle died intestate, plaintiff may recover for such services on a quantum meruit, though the contract was void within the statute of frauds.—*Hamilton v. Thirston*, 93 Md. 213, 48 Atl. 709. [Cited and annotated in 49 L. R. A. (N. S.) 16, on necessity of pleading statute of frauds; in 11 L. R. A. (N. S.) 892, on implied agreement to pay for services of relative or member of household; in 37 L. R. A. (N. S.) 642, on right to recover value of services in consideration of contract to convey or devise void by statute of frauds; in 41 L. R. A. (N. S.) 248, on measure of damages for failure to compensate for services by will.]

(d) Where a husband received money belonging to his wife to invest in real estate for her benefit, under a parol agreement with her to that effect, though the contract was void under the statute of frauds, the estate of the wife can recover in equity the sum advanced.—*Schroeder v. Loeber*, 75 Md. 195, 23 Atl. 579, 24 Atl. 226. [Cited and annotated in 6 L. R. A. (N. S.) 384, on trust by husband's investing wife's separate property in realty in own name.]

(e) The mother of deceased attempted by writing to bind him, then 20 years of age, as apprentice to defendants, for 5 years, for a stipulated sum; \$200 to be retained by defendants from the wages as a penalty if deceased left for any cause. The contract was not signed by defendants. Deceased remained with them after coming of age, until killed by accident. Held, that the contract, being made by the mother, was void, and that the son's continuance under it would not amount to a ratification of it, because of the statute of frauds; but, as deceased continued

to work after coming of age with knowledge of the terms, he would be bound to that rate of compensation, but the forfeiture could not be enforced.—*Baker v. Lauterbach*, 68 Md. 64, 11 Atl. 703.

(f) If one person expends his money in making beneficial improvements on the land of another upon the faith of a parol contract by the latter to convey, and specific execution of the contract cannot be decreed because of the uncertainty in the proof of its terms, a court of equity will decree compensation to the extent of the value of such improvements, and in some cases will grant relief by declaring the same to be an equitable lien upon the property.—*McNamee v. Withers*, 37 Md. 171. [Cited and annotated in 53 L. R. A. 341, on right to compensation for bona fide improvements on land under oral contract or gift.]

(g) Where a contract for work is within the statute of frauds and services are performed, the party may recover on a quantum meruit.—*Ellicott v. Turner*, 4 Md. 476. [Cited and annotated in 53 L. R. A. 356, on moral obligation as consideration; in 15 L. R. A. (N. S.) 319, on parol contracts for services performable within a year, though not so intended.]

### § 139. Contracts completely performed.

#### Cross-Reference.

Right to purchase money on conveyance under parol contract of sale, see ante, § 133.

(a) Where plaintiff claimed to have had a verbal contract to purchase certain lands, after which he contracted with defendant to pay him half of the profits to be realized on a sale of the lands, conveyances subsequently made from the owners to the various purchasers from plaintiff and defendant, and from such purchasers to their vendees, did not constitute such an execution of plaintiff's contract with defendant as would take the same out of the statute of frauds.—*Morgart v. Smouse*, 103 Md. 463, 63 Atl. 1070, 115 Am. St. Rep. 367. [Cited and annotated in 49 L. R. A. (N. S.) 11, on necessity of pleading statute of frauds; in 19 L. R. A. (N. S.) 879, on applicability of statute of frauds to assignment or surrender of purchaser's interest under land contract; in 33 L. R. A. (N. S.) 884, on validity of parol partnership to deal in land.]

(b) The owner of a lot conveyed part of it, and, in accordance with an oral agreement

with his grantee that an alley should be left between their properties for their mutual benefit, one was laid out, half on the property of each, and used continuously by the owners of the property for 35 years. *Held*, that, the agreement in pursuance of which the alley was laid out having been fully executed by both sides, both parties had an easement in the alley.—*Clark v. Henckel*, 77 Md. xv, memorandum case, 26 Atl. 1039, full report.

(c) Although an oral agreement to pay the debt of another by delivering merchandise be within the statute of frauds, yet, when it has been fulfilled, it will be considered as valid as though it had been in writing, and signed by the parties, and the value of the merchandise cannot be recovered.—*Webster v. Le Compte*, 74 Md. 249, 22 Atl. 232.

(d) The statute of frauds as to contracts made in consideration of marriage does not make them void if they are not in writing, but merely inhibits an action on them. If they be executed, the rights of property acquired under them are just as sacred as if the contracts had been made in writing and signed by the parties.—*Crane v. Gough*, 4 Md. 316.

(e) The respective fathers of persons who contemplated marriage stipulated by parol that the father of the intended wife should purchase a farm for the use of his daughter and her husband, and that the other's father should put on certain personal property, including slaves. Pursuant to such contract the farm was purchased, and the husband and wife were put in possession by the wife's father, and the husband's father put on the farm the negroes in question. *Held*, in an action by the executor of the husband's father to replevy the negroes, that proof of the possession of the negroes by the husband under the agreement was a good defense.—*Tuck v. Bowie*, 1 Md. 87.

#### § 140. Discharge of contracts without performance.

##### Cross-Reference.

Parol modification of written contract, see ante, § 131.

#### § 141. Contracts as ground of defense.

##### Cross-Reference.

Contracts as ground for equitable relief, see post, § 142.

#### § 142. Contracts as ground for equitable relief.

##### Cross-References.

Contracts as ground of defense, see ante, § 141.

Lien for purchase money paid, see ante, § 138.

Specific performance, see "Specific Performance," §§ 39-47.

(a) Though the parol agreement of the parties that they should purchase a farm for a certain amount, and after its purchase should move onto and jointly operate it, the net profits of their joint labors to be applied to payment of the purchase money, and they, after it was so paid for, each to have a half interest therein as tenants in common, is within the statute of frauds, so that plaintiff cannot have specific performance or relief on the ground of a trust in the land, defendant having the contract of purchase made in his own name, and the conveyance to him alone, and having refused to convey or to account for the profits of their labors, plaintiff may have relief in equity by compensation to the amount of the profits belonging to him under such agreement, derived from their joint operation and development of the land, which were applied, or received by defendant to be applied, to payment of the purchase money and to the improvement of the property.—*Wiley v. Wiley*, 115 Md. 646, 81 Atl. 180, Ann. Cas. 1913A, 789.

#### § 143. Persons to whom statute is available.

##### Cross-Reference.

Contract within statute as consideration for conveyance claimed to be fraudulent as to creditors, see "Fraudulent Conveyances," § 94.

#### § 144. Waiver of bar of statute.

(a) Where complainant asks specific performance of a parol contract within the statute of frauds, it is not necessary for the defendant, if he deny the contract, in his answer to plead the statute in bar.—*Semmes v. Worthington*, 38 Md. 298. [Cited and annotated in 49 L. R. A. (N. S.) 16, on necessity of pleading statute of frauds; in 44 L. R. A. (N. S.) 747, 748, 750, on specific performance of contract to leave property in consideration of services or support; in 14 L. R. A. 862, 863, on agreement to pay money or give property after death; in 3 L. R. A. (N.

S.) 812, on taking possession as part performance of oral contract as to realty; in 4 L. R. A. (N. S.) 411, on sufficiency of evidence to overcome denial of contract.]

(b) Upon a bill for the specific performance of a verbal contract for the conveyance of lands, it was held that where the answer admitted an agreement substantially the same as that alleged in the bill, without pleading the statute of frauds, that defense could not be taken advantage of afterward.—*Artz v. Grove*, 21 Md. 456. [Cited and annotated in 49 L. R. A. (N. S.) 24, on necessity of pleading statute of frauds.]

(c) The court will decree a performance where an answer to a bill for the specific execution of a parol agreement admits the agreement, and does not plead the statute of frauds.—*Albert v. Winn*, 5 Md. 66. [Cited and annotated in 11 L. R. A. (N. S.) 595, on postnuptial written contract to confirm antenuptial oral contract relinquishing rights.]

(d) Equity will enforce the specific performance of a contract within the statute of frauds, though not in writing, where defendant confesses the agreement and does not insist on the statute.—*Winn v. Albert*, 2 Md. Ch. 169. [Cited and annotated in 49 L. R. A. (N. S.) 27, on necessity of pleading statute of frauds.]

## X. PLEADING, EVIDENCE, TRIAL, AND REVIEW.

### Cross-References.

In justice's court, see "Justices of the Peace," § 100.

Pleading in action to enforce trust, see "Trusts," § 371.

Pleading statute on appeal from justice's court as superseding answer in lower court, see "Justices of the Peace," § 174.

Review as dependent on presentation of question in lower court, see "Appeal and Error," § 173.

### § 145. Pleading contract or transaction within statute.

#### Cross-Reference.

Complaint in action on joint adventure as stating contract within statute of frauds, see "Joint Adventures," § 5.

### § 146.—As cause of action in general.

#### Cross-Reference.

As ground of defense, see post, § 147.

(a) In an action to recover on a promise to pay the debt of a third person, it is not necessary to allege in the declaration that the promise was in writing; proof at the trial

being sufficient.—*Ecker v. Bohn*, 45 Md. 278. [Cited and annotated in 49 L. R. A. (N. S.) 3, on necessity of pleading statute of frauds.] *Ecker v. McAllister*, 45 Md. 290. [Cited and annotated in 23 L. R. A. (N. S.) 376, 386, 396, on right of one to testify as to his intent.]

### § 147.—As ground of defense.

#### Cross-Reference.

As cause of action, see ante, § 146.

### § 148.—Writing or other compliance with statute.

(a) In an action against administrators for damages for breach of their intestate's agreement to will plaintiff a child's interest in his estate, consisting of real and personal property, in consideration of services to be rendered during his lifetime, the declaration is not demurrable for failure to allege that the contract was in writing, as required by the statute of frauds.—*Hamilton v. Thirston*, 93 Md. 213, 48 Atl. 709. [Cited and annotated in 49 L. R. A. (N. S.) 16, on necessity of pleading statute of frauds; in 11 L. R. A. (N. S.) 892, on implied agreement to pay for services of relative or member of household; in 37 L. R. A. (N. S.) 642, on right to recover value of services in consideration of contract to convey or devise void by statute of frauds; in 41 L. R. A. (N. S.) 248, on measure of damages for failure to compensate for services by will.]

(b) It need not be alleged in the complaint that the contract sued on is in writing, as required by the statute of frauds, as such fact properly arises on the proof.—*Horner v. Frazier*, 65 Md. 1, 4 Atl. 133.

### § 149.—Matter in avoidance of bar of statute.

### § 150. Demurrer raising defense.

#### Cross-Reference.

Necessity of raising defense by plea or demurrer, see post, § 152.

(a) Where a bill did not show that a contract was not in writing, it would be presumed, as against a demurrer based on the statute of frauds, that it was in writing.—*Campbell v. Burnett*, 120 Md. 214, 87 Atl. 894.

### § 151. Pleading statute as defense.

(a) Where complainant asks specific performance of a parol contract within the statute of frauds, it is not necessary for the defendant, if he deny the contract, in his answer to plead the statute in bar.—*Semmes*

*v. Worthington*, 38 Md. 298. [Cited and annotated, see *supra*, § 144.]

(b) Upon a bill for the specific performance of a verbal contract for the conveyance of lands, it was *held* that where the answer admitted an agreement substantially the same as that alleged in the bill, without pleading the statute of frauds, that defense could not be taken advantage of afterward.—*Artz v. Grove*, 21 Md. 456. [Cited and annotated, see *supra*, § 144.]

(c) The court will decree a performance where an answer to a bill for the specific execution of a parol agreement admits the agreement, and does not plead the statute of frauds.—*Albert v. Winn*, 5 Md. 66. [Cited and annotated, see *supra*, § 144.]

(d) Equity will enforce the specific performance of a contract within the statute of frauds, though not in writing, where defendant confesses the agreement and does not insist on the statute.—*Winn v. Albert*, 2 Md. Ch. 169. [Cited and annotated, see *supra*, § 144.]

### § 152.—Necessity.

#### Cross-References.

In action to enforce trusts, see "Trusts," § 371.

In justice's court, see "Justices of the Peace," § 100.

(a) The statute of frauds may be relied on as a defense under the general issue, without being specially pleaded.—*Morgart v. Smouse*, 103 Md. 463, 63 Atl. 1070, 115 Am. St. Rep. 367. [Cited and annotated in 49 L. R. A. (N. S.) 11, on necessity of pleading statute of frauds; in 19 L. R. A. (N. S.) 879, on applicability of statute of frauds to assignment or surrender of purchaser's interest under land contract; in 33 L. R. A. (N. S.) 884, on validity of parol partnership to deal in land.]

(b) Where complainant asks specific performance of a parol contract within the statute of frauds, it is not necessary for the defendant, if he deny the contract, in his answer to plead the statute in bar.—*Semmes v. Worthington*, 38 Md. 298. [Cited and annotated, see *supra*, § 144.]

(c) When, in an equity proceeding, the complainant sets up in his bill an agreement which would be void under the statute of frauds, if not in writing, it is not necessary

for the defendant, if he relies upon the statute as a defense, to plead the same specially or insist on it as a bar. The complainant must, at the hearing, either establish the agreement by written evidence thereof, or take the case out of the statute by proof of part performance.—*Billingslea v. Ward*, 33 Md. 48. [Cited and annotated in 49 L. R. A. (N. S.) 16, on necessity of pleading statute of frauds; in 3 L. R. A. (N. S.) 810, on taking possession as part performance of oral contract as to realty.]

(d) Upon a bill for the specific performance of a verbal contract for the conveyance of lands, it was *held*, that where the answer admitted an agreement substantially the same as that alleged in the bill, without pleading the statute of frauds, that defense could not be taken advantage of afterward.—*Artz v. Grove*, 21 Md. 456. [Cited and annotated, see *supra*, § 151.]

(e) The court will decree a performance where an answer to a bill for the specific execution of a parol agreement admits the agreement, and does not plead the statute of frauds.—*Albert v. Winn*, 5 Md. 66. [Cited and annotated, see *supra*, § 144.] (See *Winn v. Albert*, 2 Md. Ch. 169.)

(f) In a bill to enforce the specific performance of a contract, within the statute of frauds and not in writing, an answer of the defendant confessing the parol agreement is not a waiver of the defense of the statute.—*Winn v. Albert*, 2 Md. Ch. 169. [Cited and annotated, see *supra*, § 144.]

(g) There can be no doubt that a court of equity will enforce the specific performance of a contract, within the statute of frauds and not in writing, when it is fully set forth in the bill, and is confessed by the answer of the defendant, and the statute is not relied upon as a defense.—*Winn v. Albert*, 2 Md. Ch. 169. [Cited and annotated, see *supra*, § 144.]

(h) Where a party sets up an agreement in his bill invalid under the statute of frauds, and the defendant in his answer denies the agreement, it is not necessary for him to insist upon the statute as a bar; but the complainant, at the hearing, must establish the agreement by written evidence.—*Small v. Owings*, 1 Md. Ch. 363. [Cited and anno-

tated in 49 L. R. A. (N. S.) 16, on necessity of pleading statute of frauds.]

(i) If the defendant admits in his answer the parol agreement, without insisting on the statute, the court will decree a specific performance, on the ground that the defendant has thereby renounced the benefit of the statute.—*Small v. Owings*, 1 Md. Ch. 363. [Cited and annotated, see supra.]

(j) The statute of frauds must be specially relied upon in the pleadings, or it cannot be taken advantage of, by objecting to the proofs or otherwise.—*Lingan v. Henderson*, 1 Bland 236. [Cited and annotated in 49 L. R. A. (N. S.) 30, on necessity of pleading statute of frauds; in 21 L. R. A. 551, on bar of principal debt as bar to foreclosure of mortgage or deed of trust; in 39 L. R. A. (N. S.) 1172, on effect of barring of action for purchase money upon right to enforce vendor's lien.]

(k) If a defendant admits a verbal agreement, but insists upon the statute of frauds in bar to the relief prayed for its violation, he is entitled to the benefit of the statute.—*Hamilton v. Jones*, 3 G. & J. 127. [Cited and annotated in 49 L. R. A. (N. S.) 27, on necessity of pleading statute of frauds.]

### § 153.—Sufficiency of denials and allegations.

#### Cross-Reference.

General issue or general denial, see ante, § 152.

(a) Where, in an action against administrators for damages for breach of testator's oral contract to will property in consideration of services, the plea did not set up the statute of frauds as a defense, but categorically denied the making of the contract, such plea is sufficient to entitle defendants to rely on the statute as a defense.—*Hamilton v. Thirston*, 93 Md. 213, 48 Atl. 709. [Cited and annotated in 49 L. R. A. (N. S.) 16, on necessity of pleading statute of frauds; in 11 L. R. A. (N. S.) 892, on implied agreement to pay for services of relative or member of household; in 37 L. R. A. (N. S.) 642, on right to recover value of services in consideration of contract to convey or devise void by statute of frauds; in 41 L. R. A. (N. S.) 248, on measure of damages for failure to compensate for services by will.]

### § 154.—Amendment to plead statute.

### § 155.—Demurrer or reply to plea or answer.

### § 156. Issues, proof, and variance.

#### Cross-References.

Defense of statute of frauds under general issue or general denial, see ante, § 152.

In actions before justices of the peace, see "Justices of the Peace," § 100.

(a) Where a party sets up an agreement in his bill invalid under the statute of frauds, and the defendant in his answer denies the agreement, it is not necessary for him to insist upon the statute as a bar; but the complainant, at the hearing, must establish the agreement by written evidence.—*Small v. Owings*, 1 Md. Ch. 363. [Cited and annotated, see supra, § 152.]

(b) The statute of frauds must be specially relied upon in the pleadings, or it cannot be taken advantage of, by objecting to the proofs or otherwise.—*Lingan v. Henderson*, 1 Bland 236. [Cited and annotated, see supra, § 152.]

### § 157. Objections to evidence of oral contract.

### § 158. Evidence.

#### Cross-References.

Admissibility of contract in evidence in suit not on the contract, see ante, § 119.  
Parol evidence to connect writings, see ante, § 118.

Presumptions arising from failure to allege compliance with statute, see ante, § 148.

(a) Under the statute of frauds as incorporated in the Uniform Sales Act (Code, art. 83, § 25), one suing for the price of goods exceeding the value of \$50, claimed to have been sold to defendant, must prove an acceptance by defendant, or that they were shipped to him in compliance with an agreement signed by defendant or his authorized agent.—*Brager v. Levy*, 122 Md. 554, 90 Atl. 102.

### § 159. Questions for jury.

(a) Where plaintiff refused to sell lumber to a contractor until it had received defendant's positive assurance that he would see plaintiff paid, and had ascertained that defendant was a man of means, and was thereby induced to take the risk of furnishing the lumber, the question as to whether defendant had made an original promise to pay for the lumber, instead of a collateral one to answer for the debt of the contractor,

and thus within the statute of frauds, should have been submitted to the jury, although defendant's promise was primarily collateral in form.—*East Baltimore Lumber Co. v. K'nessett Israel Aushe S'phard Congregation*, 100 Md. 125, 689, 59 Atl. 180, 62 Atl. 575, on motion for rehearing. *Same v. Walderman*, Id.

(b) In ascertaining whether an undertaking is original or collateral, and thus without or within the statute of frauds, the circumstances accompanying the whole transaction may be looked to, and the determination of the question is ordinarily for the jury.—*East Baltimore Lumber Co. v. K'nessett Israel Aushe S'phard Congregation*, 100 Md. 125, 689, 59 Atl. 180, 62 Atl. 575, on motion for rehearing. *Same v. Walderman*, Id.

(c) When, in an action for the price of 10 car loads of potatoes, it appeared that the contract, if any, was verbal, and there was no evidence that defendants received or accepted the goods, it was not error to take the consideration of the case from the jury, the contract being within the statute of frauds.—*Cooney v. Hax*, 92 Md. 184, 48 Atl. 58.

#### § 160. Instructions.

(a) Where a materialman sued the contractor and owners of a building for materials as joint original promisors, alleging a joint contract to pay, an instruction that plaintiff could not recover against the owners, unless the materials were sold and delivered to them "upon their special and exclusive credit," was properly refused.—*Oldenburg & Kelley v. Dorsey*, 102 Md. 172, 62 Atl. 576. [Cited and annotated in 15 L. R. A. (N. S.) 215, on oral contemporary promise to pay where benefit inures to another.]

(b) Where plaintiff sued the administrators of an intestate for damages for breach

of decedent's oral agreement to will him a child's portion of his estate, consisting of real and personal property, which would be one-third, in consideration of services to intestate, the contract being void within the statute of frauds, it was error to instruct that if such contract had been made, and plaintiff had performed his part, he was entitled to recover to the extent of the value of the estate in the hands of defendants, admitted to be less than one-third of the estate.—*Hamilton v. Thirston*, 93 Md. 213, 48 Atl. 709. [Cited and annotated, see supra, § 153.]

(c) In an action for breach of a contract void within the statute of frauds, the statute being a complete defense, it was error to refuse to instruct that under the pleadings there was no evidence legally sufficient to entitle plaintiff to recover, and the verdict should be for defendant.—*Hamilton v. Thirston*, 93 Md. 213, 48 Atl. 709. [Cited and annotated, see supra, § 153.]

(d) A prayer that there was no evidence of a sale and delivery within the provisions of the seventeenth section of the statute of frauds will be rejected, where a letter is introduced from the defendant requesting a bill of articles furnished, which, though not evidence in itself sufficient, will, with other circumstances, tend to establish the contract.—*Atwell v. Miller*, 6 Md. 10, 61 Am. Dec. 294. [Cited and annotated in 52 L. R. A. 558, on party's books of account as evidence in own favor.]

#### § 161. Verdict and findings.

#### § 162. Review.

(a) Sheriff's sales are embraced by the provisions of the statute of frauds, but they may be taken out of its operation in the appellate court by parol evidence not excepted to below.—*Spencer v. Pearce*, 10 G. & J. 294.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.



## FRAUDULENT CONVEYANCES.\*

*Scope-Note.*

[INCLUDES transfers of property and other transactions or proceedings void as to creditors because intended or operating to delay, hinder, or defraud them, and conveyances void as to subsequent purchasers for inadequacy of consideration, reservation of power to revoke them, etc.; evidence relating thereto; rights, liabilities, and remedies in general of the parties and those claiming under them, and of creditors and subsequent purchasers, more particularly actions to set aside such transfers; and criminal responsibility for such fraudulent transfers.

[EXCLUDES transfers by husband or by wife fraudulent as to the other (see "*Husband and Wife*"); transfers by partners fraudulent as to partnership or individual creditors (see "*Partnership*"); mortgages of personal property invalid as to creditors on grounds other than fraud (see "*Chattel Mortgages*"); fraud in assignments for benefit of creditors (see "*Assignments for Benefit of Creditors*"); transfers fraudulent under insolvent or bankrupt laws (see "*Insolvency*"; "*Bankruptcy*"); fraud in disposing of property as ground for arrest (see "*Arrest*") or attachment (see "*Attachment*"); and proceedings by judgment creditors to subject property to their judgments, either supplementary to execution (see "*Execution*"), or by action (see "*Creditors' Suit*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Transfers and Transactions Invalid.****(A) GROUNDS OF INVALIDITY IN GENERAL.**

- § 1. Nature of fraud in transfers of property.
- § 2. Statutory provisions.
- § 3. — Protection of creditors.
- § 4. — Protection of subsequent purchasers.
- § 5. — Construction in general.
- § 6. — Retroactive operation.
- § 7. Elements of fraud as to creditors.
- § 8. — In general.
- § 9. — Intent.
- § 10. — Disposition of property.
- § 11. — Effect of transaction to delay, hinder, or defraud.
- § 12. Elements of fraud as to subsequent purchasers.
- § 13. Badges of fraud.
- § 14. — In general.
- § 15. — Particular facts and circumstances.
- § 16. — Conclusiveness and effect.
- § 17. Transactions valid in inception.
- § 18. Transactions fraudulent in part.
- § 19. — Fraud as to part of property.
- § 20. — Fraud as to one or more grantees.
- § 21. — Fraud in one or more separate conveyances or transactions.
- § 22. Purging transaction of fraud.

**I. Transfers and Transactions Invalid—Continued.****(B) NATURE AND FORM OF TRANSFER.**

- § 23. Elements or evidence of fraud in general.
- § 24. Transactions subject to attack by creditors.
- § 25. Transactions subject to attack by subsequent purchasers.
- § 26. Absolute transfers.
- § 27. Transfers as security.
- § 28. Payment or satisfaction of liabilities.
- § 29. Collusive legal proceedings in general.
- § 30. Confession of judgment.
- § 31. Suffering levy of attachment or execution.
- § 32. Suffering loss of property.
- § 33. Release of right to conveyance, or reconveyance.
- § 34. Rescission of contract.
- § 35. Conditional purchases by debtor.
- § 36. Loan or hire of chattels.
- § 37. Placing or leaving property in possession of agent.
- § 38. Purchase of exempt property or homestead.
- § 39. Payment of premiums for insurance.
- § 40. Conducting business in name of another.
- § 41. Organization of corporation.

**(C) PROPERTY AND RIGHTS TRANSFERRED.**

- § 43. Property subject to claims of creditors in general.
- § 44. Interest of debtor in property in general.
- § 45. Real property.
- § 46. Personal property in general.
- § 47. Stock in trade.
- § 48. Rights in action.
- § 49. Particular estates and interests.
- § 50. Property or rights without pecuniary value.
- § 51. Exempt property in general.
- § 52. Homestead.
- § 53. Property in other state or county.

**(D) INDEBTEDNESS, INSOLVENCY, AND INTENT OF GRANTOR.**

- § 54. Indebtedness element of fraud.
- § 55. Assumption of debts by grantee.
- § 56. Solvency of grantor.
- § 57. — In general.
- § 58. — Retention of property sufficient to pay debts.
- § 59. Security for debts of grantor.
- § 60. Solvency of debtor liable primarily or jointly with grantor.
- § 61. Insolvency element of fraud.
- § 62. Inability to pay debts constituting insolvency.
- § 63. Intent to defraud pre-existing creditors.
- § 64. — In general.
- § 65. — One or more creditors.
- § 66. — Pending actions or other proceedings.
- § 67. — Preventing sacrifice of property.
- § 68. Intent to defraud subsequent creditors.

**I. Transfers and Transactions Invalid—Continued.****(D) INDEBTEDNESS, INSOLVENCY, AND INTENT OF GRANTOR—Continued.**

- § 69. — In general.
- § 70. — Engaging in hazardous business.
- § 71. Intent to defraud subsequent purchasers.
- § 72. Good faith of grantor in conveyance procured by fraud of grantee.

**(E) CONSIDERATION.**

- § 73. Want or insufficiency element of fraud.
- § 74. — As to creditors.
- § 75. — As to subsequent purchasers.
- § 76. Nature and adequacy.
- § 77. Sufficiency in general.
- § 78. Executory character in general.
- § 79. Future services.
- § 80. Future support.
- § 81. Future advances.
- § 82. Promissory notes, acceptances, and indorsements.
- § 83. Security to indorser, surety, or guarantor.
- § 84. Assumption of liability.
- § 85. Pre-existing liability.
- § 86. — In general.
- § 87. — Payment or satisfaction.
- § 88. — Security.
- § 89. — Contingent liability.
- § 90. — Invalidity of original transaction.
- § 91. — Debt barred by limitation.
- § 92. Moral obligation.
- § 93. Natural affection in general.
- § 94. Marriage and marriage settlements.
- § 95. Transactions between husband and wife.
- § 96. Transactions between parent and child.
- § 97. Family settlements.
- § 98. Failure of consideration.
- § 99. Partial insufficiency or failure.
- § 100. Partial invalidity or illegality.

**(F) CONFIDENTIAL RELATIONS OF PARTIES.**

- § 101. Element or evidence of fraud.
- § 102. Family relation in general.
- § 103. Husband and wife.
- § 104. — Transactions in general.
- § 105. — Procuring conveyances from third persons.
- § 106. — Making improvements on real property.
- § 107. Parent and child.
- § 108. Fiduciary and friendly relations.

**(G) RESERVATIONS AND TRUSTS FOR GRANTOR.**

- § 109. Element or evidence of fraud.
- § 110. Benefits reserved to grantor.
- § 111. Conveyances in trust for grantor.
- § 112. Reservation of power to revoke.
- § 113. Secret reservations or trusts.

**I. Transfers and Transactions Invalid—Continued.****(H) PREFERENCES TO CREDITORS.**

- § 114. Element or evidence of fraud.
- § 115. Right of debtor to prefer creditor.
- § 116. Statutory provisions.
- § 117. Intent to defeat other creditors.
- § 118. Preference of husband, wife, or other relatives.
- § 119. Confidential relations of parties.
- § 120. Nature and form of transaction in general.
- § 121. Payment or satisfaction of debts.
- § 122. Mortgages and other transfers as security.
- § 123. Confession of judgment.
- § 124. Suffering judgment by default.
- § 125. Suffering levy of attachment or execution.
- § 126. Nature of debts preferred in general.
- § 127. Preference of secured debts.
- § 128. Preference of sureties.
- § 129. Preference of invalid debt.
- § 130. Effect of illegal preference.

**(I) RETENTION OF POSSESSION OR APPARENT TITLE BY GRANTOR.**

- § 131. Element or evidence of fraud in general.
- § 132. — As to creditors.
- § 133. — As to subsequent purchasers.
- § 134. Statutory provisions.
- § 135. — Change of possession.
- § 136. — Record or filing of written instrument.
- § 137. Nature of property transferred.
- § 138. Nature and form of transaction in general.
- § 139. Absolute sales and conveyances.
- § 140. Public or judicial sales.
- § 141. Conditional sales.
- § 142. Reservation of power of disposition or use.
- § 143. Possession as lessee.
- § 144. Possession as bailee.
- § 145. Possession as agent or employee.
- § 146. Possession by husband, wife, or other relatives.
- § 147. Sufficiency of transfer of possession.
- § 148. — Possibility of delivery.
- § 149. — Immediate delivery.
- § 150. — Actual and substantial change of possession.
- § 151. — Visible and notorious possession.
- § 152. — Exclusive or concurrent possession.
- § 153. — Continued change of possession.
- § 154. Failure to record or file instrument.

**(J) KNOWLEDGE AND INTENT OF GRANTEE.**

- § 155. Elements of fraud in general.
- § 156. Knowledge or actual notice.
- § 157. Knowledge or notice implied from relation between parties.
- § 158. Constructive notice, and facts putting on inquiry.

**I. Transfers and Transactions Invalid—Continued.****(J) KNOWLEDGE AND INTENT OF GRANTEE—Continued.**

- § 159. Operation and effect of knowledge or notice.
- § 160. Payment of consideration after notice.
- § 161. Participation in fraudulent intent.
- § 162. — In general.
- § 163. — Operation and effect.
- § 164. Effect of good faith of grantee.
- § 165. — In general.
- § 166. — Mortgagees and pledgees.
- § 168. — Nature and amount of consideration.
- § 169. — Voluntary conveyances.
- § 170. — Confidential relations of parties.
- § 171. — Preferred creditors.

**II. Rights and Liabilities of Parties and Purchasers.****(A) ORIGINAL PARTIES.**

- § 172. Validity of transaction as between parties.
- § 173. Mutual rights and liabilities of parties.
- § 174. — Title and rights to property.
- § 175. — Conveyance or transaction as satisfaction of liability.
- § 176. — Enforcement of executory contract.
- § 177. — Payment and recovery of consideration.
- § 178. — Expenditures, liabilities, and damages incurred.
- § 179. Rights and liabilities as to third persons in general.
- § 180. Rights and liabilities of grantees as to creditors.
- § 181. — Property and proceeds thereof.
- § 182. — Personal liabilities.
- § 183. — Reimbursement of consideration and expenditures.
- § 184. — Claims and liens acquired by grantee.
- § 185. Rights of grantees as bona fide purchasers.
- § 186. — In general.
- § 187. — Nature and extent of consideration.
- § 188. Actions.

**(B) PURCHASERS FROM GRANTOR.**

- § 189. Subsequent purchasers in general.
- § 191. Mortgagees and pledgees.
- § 192. Bona fide purchasers.

**(C) PURCHASERS FROM GRANTEE IN GENERAL.**

- § 193. Rights and liabilities as to original parties.
- § 194. Rights and liabilities as to creditors of original grantor.
- § 195. Rights and liabilities as to purchasers from original grantor.

**(D) BONA FIDE PURCHASERS FROM GRANTEE.**

- § 196. Subsequent purchasers in general.
- § 197. Mortgagees and pledgees.
- § 198. Good faith in general.
- § 199. Notice.
- § 200. Consideration.
- § 201. Rights and liabilities.

**II. Rights and Liabilities of Parties and Purchasers—Continued.****(D) BONA FIDE PURCHASERS FROM GRANTEE—Continued.**

- § 202. — As to original parties.
- § 203. — As to creditors of original grantor.
- § 204. — As to purchasers from original grantor.

**III. Remedies of Creditors and Purchasers.****(A) PERSONS ENTITLED TO ASSERT INVALIDITY.**

- § 205. Necessity of prejudice.
- § 206. Pre-existing creditors.
- § 207. Subsequent creditors.
- § 208. — In general.
- § 209. — Effect of fraud as to pre-existing creditors.
- § 210. — Knowledge or notice of fraudulent transaction.
- § 211. Assignees.
- § 212. Nature of claims of creditors.
- § 213. — In general.
- § 214. — On contracts.
- § 215. — For torts.
- § 216. — On demands not liquidated.
- § 217. — On demands not matured.
- § 218. — On contingent liabilities.
- § 219. General creditors.
- § 220. Secured creditors.
- § 221. Judgment creditors.
- § 222. Attaching creditors and officers.
- § 223. Creditors purchasing at execution sales.
- § 224. Subsequent purchasers and incumbrancers.
- § 225. Estoppel and waiver.

**(B) REMEDIES ON GROUND OF NULLITY OF TRANSFER.**

- § 226. Application of property to claims of creditors in general.
- § 227. Necessity of direct action.
- § 228. Levy of attachment.
- § 229. Garnishment.
- § 230. Levy of execution.
- § 231. Collateral attack on judgment or other proceeding as fraudulent.
- § 232. Contest of claim to property levied on.
- § 233. Establishment of lien as against grantees or others.
- § 235. Accounting by grantee.

**(C) RIGHT OF ACTION TO SET ASIDE TRANSFER, AND DEFENSES.**

- § 237. Nature and form of remedy.
- § 239. Existence of other remedy.
- § 240. Grounds of action in general.
- § 241. Conditions precedent.
- § 242. Defenses.
- § 243. Pendency of other action or proceeding.
- § 244. Abatement on death of party.

**III. Remedies of Creditors and Purchasers—Continued.****(D) JURISDICTION, LIMITATIONS, AND LACHES.**

- § 245. Jurisdiction of cause of action.
- § 246. Jurisdiction of persons and property involved.
- § 247. Venue.
- § 248. Time to sue and limitations.
- § 249. Laches.

**(E) PARTIES AND PROCESS.**

- § 250. Plaintiffs.
- § 251. — In general.
- § 252. — Suing in behalf of all creditors.
- § 253. — Joinder.
- § 254. Defendants.
- § 255. — In general.
- § 256. — Joinder.
- § 257. Intervention and change of parties.

**(F) PLEADING.**

- § 258. Bill, complaint, or petition.
- § 259. — Form and requisites in general.
- § 260. — Indebtedness.
- § 261. — Insolvency.
- § 262. — Description of property.
- § 263. — Fraudulent transaction.
- § 264. — Want or exhaustion of other remedy.
- § 265. — Prayer for relief.
- § 266. Plea or answer, and subsequent pleadings.
- § 267. Pleading fraud as defense.
- § 268. Amended and supplemental pleadings.
- § 269. Issues, proof, and variance.

**(G) EVIDENCE.**

- § 270. Presumptions and burden of proof.
- § 271. — In general.
- § 272. — Insolvency.
- § 273. — Intent of grantor in general.
- § 274. — Intent to defraud subsequent creditors.
- § 275. — Intent to defraud subsequent purchasers.
- § 276. — Nature and circumstances of transaction in general.
- § 277. — Consideration.
- § 278. — Relations between parties.
- § 279. — Reservations and trusts for grantor.
- § 280. — Preferences to creditors.
- § 281. — Retention of possession.
- § 282. — Knowledge and intent of grantee.
- § 283. — Good faith of purchasers.
- § 284. — Effect of transaction.
- § 285. Admissibility.
- § 286. — In general.
- § 287. — Indebtedness.

**III. Remedies of Creditors and Purchasers—Continued.****(G) EVIDENCE—Continued.**

- § 288. — Insolvency.
- § 289. — Intent of grantor.
- § 290. — Nature and circumstances of transaction.
- § 291. — Consideration.
- § 292. — Knowledge and intent of grantee.
- § 293. — Good faith of purchaser.
- § 294. Weight and sufficiency.
- § 295. — In general.
- § 296. — Indebtedness.
- § 297. — Insolvency.
- § 298. — Intent of grantor.
- § 299. — Nature and circumstances of transaction.
- § 300. — Consideration.
- § 301. — Knowledge and intent of grantee.
- § 302. — Good faith of purchaser.

**(H) DISCOVERY, INJUNCTION, AND RECEIVER.**

- § 303. Discovery.
- § 304. Injunction.
- § 305. Appointment of receiver.

**(I) TRIAL.**

- § 306. Mode and conduct in general.
- § 307. Reference.
- § 308. Questions for jury.
- § 309. Instructions.
- § 310. Verdict and findings.

**(J) JUDGMENT OR DECREE AND EXECUTION.**

- § 311. Judgment or decree.
- § 312. — In general.
- § 313. — As to property transferred.
- § 314. — Personal judgment.
- § 315. — Construction and operation.
- § 316. Execution and enforcement of judgment or decree in general.
- § 317. Sales and conveyances under order of court.

**(K) DISPOSITION OF PROPERTY OR PROCEEDS.**

- § 318. Subjection to claims of creditors in general.
- § 319. Costs and expenses.
- § 320. Mortgages and other liens.
- § 321. Priorities of creditors.
- § 322. Grantee or purchaser as creditor.
- § 323. Application to judgment or execution.
- § 324. Right to surplus.

**(L) REVIEW.**

- § 325. Presentation and reservation in lower court of grounds of review.
- § 326. Taking and perfecting proceedings and effect thereof.
- § 327. Scope and extent of review.
- § 328. Determination and disposition of cause.



**IV. Criminal Responsibility.**

- § 329. Offenses.
- § 330. Penalties and actions therefor.
- § 331. Criminal prosecutions.

*Cross-References.*

- Act changing presumption as to fraudulent character of transaction as impairing vested rights, see "Constitutional Law," § 106.
- Act prescribing rules of evidence of fraud as within legislative power, see "Constitutional Law," § 55.
- Act regulating sales of merchandise in bulk as class legislation, see "Constitutional Law," § 208.
- Act regulating sales of merchandise in bulk as infringing liberty of contract, see "Constitutional Law," § 89.
- Act regulating sales of merchandise in bulk as violating private property rights, see "Constitutional Law," § 87.
- Adverse possession by parties to conveyance, see "Adverse Possession," §§ 63, 84.
- As acts of bankruptcy, see "Bankruptcy," § 57.
- By debtor prior to bankruptcy proceedings, see "Bankruptcy," §§ 159-186.
- By debtor prior to insolvency proceedings, see "Execution," § 450; "Insolvency," §§ 61-63.
- By husband in fraud of wife's right to alimony, see "Divorce," §§ 275, 276.
- By husband in fraud of wife's marital rights, see "Husband and Wife," § 6.
- By husband in fraud of wife's right of dower, see "Dower," § 20.
- By partners in fraud of partnership creditors, see "Partnership," §§ 176-190.
- Chattel mortgage sale affecting junior mortgagee, see "Chattel Mortgages," § 262.
- Conspiracy to hinder, delay, or defraud creditors, see "Conspiracy," § 10.
- Conveyances by corporations when insolvent or in contemplation of insolvency, see "Corporations," §§ 542-547, 561.
- Conveyances by insolvent operating as constructive assignments, see "Assignments for Benefit of Creditors," §§ 10-17, 295.
- Conveyances in fraud of heirs, see "Descent and Distribution," § 69.
- Devisees and heirs of grantor as persons bound by conveyance, see "Descent and Distribution," § 90; "Guardian and Ward," § 118; "Wills," § 747.
- Dower in land fraudulently conveyed, see "Dower," §§ 28, 44, 53.
- Dower, release of right as fraud on creditors, see "Dower," § 117.
- Effect of conveyance on liability for nuisance, see "Nuisance," § 9.
- Fraud affecting computation of period of limitation, see "Limitation of Actions," §§ 99, 100.
- Fraud in assignment for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 86-162, 283.
- Fraud of mortgagor in obtaining goods affecting rights of mortgagee as bona fide purchaser, see "Chattel Mortgages," § 139.
- Fraudulent disposal of materials to defeat mechanic's lien, see "Mechanics' Liens," § 52.
- Grantee's right to contest mechanic's lien, see "Mechanics' Liens," § 256.
- Grantee's right to contest tax title, see "Taxation," § 796.
- Ground for appointment of administrator, see "Executors and Administrators," § 3.
- Ground for arrest, see "Arrest," § 16.
- Ground for attachment, see "Attachment," §§ 40-45.
- Ground for forfeiture of right to exemption, see "Exemptions," § 104; "Homestead," §§ 81, 177, 180.
- Lien of judgment on land fraudulently conveyed by judgment debtor, see "Judgment," § 781.
- Marshaling assets on setting aside conveyance, see "Marshaling Assets and Securities," § 4.
- Preferences in compositions with creditors, see "Compositions with Creditors," § 13.
- Property fraudulently conveyed as property subject to testamentary disposition by grantor, see "Wills," § 6.
- Property fraudulently conveyed by decedent as assets of his estate, see "Executors and Administrators," §§ 57, 329, 417, 423, 454.
- Protection and enforcement of homestead rights as against fraudulent conveyances, see "Homestead," § 189.
- Right of creditors or purchasers to invoke statute requiring agreements to be in writing, see "Frauds, Statute of," § 143.
- Right of creditors to question validity of trusts in general, see "Trusts," § 55.
- Rights and remedies of creditors of decedent, see "Executors and Administrators," §§ 3, 57, 329, 417, 421-454.
- Rights of purchasers pendente lite, see "Lis Pendens."
- State laws as rules of decision in federal courts, see "Courts," §§ 367, 371, 372.
- Subrogation to rights of parties, see "Subrogation," §§ 14-16, 31.
- Time of delivery of deed as affecting validity of transfer, see "Deeds," § 208.
- Title of assignee for benefit of creditors to property fraudulently conveyed by assignor, see "Assignments for Benefit of Creditors," §§ 179, 228, 290.
- Title of receiver to property fraudulently conveyed, see "Receivers," §§ 68, 167.
- Title of trustee in bankruptcy to property fraudulently conveyed by bankrupt, see "Bankruptcy," §§ 142, 151, 185.
- To defeat rights under contract to devise or bequeath, see "Wills," § 65.

To evade assessment for municipal improvements, see "Municipal Corporations," § 435.

To evade taxation, see "Taxation," § 108.

Transfers and preferences affected by insolvency of bank, see "Banks and Banking," §§ 74, 286.

Transfers of bank stock to avoid liability for debts of bank, see "Banks and Banking," § 249.

Validity as against creditors of agreement between devisees and legatees, see "Wills," § 867.

Validity of contract of conditional sale, as dependent on filing or registration, see "Sales," § 465.

Validity of mortgage as dependent on filing or registration, see "Chattel Mortgages," §§ 194-197; "Mortgages," §§ 172-176.

Validity of mortgage of chattels as dependent on possession, see "Chattel Mortgages," §§ 185-191.

Validity of transfer of corporate stock as dependent on registration or transfer on books, see "Corporations," §§ 128-136.

Validity of transfer of warehouse receipts, see "Warehousemen," § 15.

## I. TRANSFERS AND TRANSACTIONS INVALID.

### (A) GROUNDS OF INVALIDITY IN GENERAL.

#### *Cross-References.*

Estoppel to assert invalidity, see post, § 225.

Evidence, see post, §§ 270-302.

Grounds of action, see post, § 240.

Persons entitled to assert invalidity, see post, §§ 205-225.

Pleading, see post, § 263.

Sufficiency of instructions, see post, § 309.

Validity of transaction between parties, see post, §§ 172-178.

### § 1. Nature of fraud in transfers of property.

#### *Cross-Reference.*

Transfer of warehouse receipts, see "Warehousemen," § 15.

(a) When any transaction necessarily produces the effect which a statute declares fraudulent as against creditors, the court may pronounce such act fraudulent. Whatever is the necessary consequence of an act deliberately done, that the law presumes every man to intend.—*Gardner v. Lewis*, 7 Gill 377. [Cited and annotated in 25 L. R. A. 450, 451, 452, 460, on oral proof of foreign laws; in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

### §§ 2-6. Statutory provisions.

#### *Cross-References.*

See post, § 208.

Change of possession of property transferred, see post, § 135.

Nature of claims as determining right to protection, see post, §§ 213-218.

Preferences, see post, § 116.

Property affected, see post, §§ 43-53.

Record or filing of written instrument, see post, § 136.

Act changing presumption as to character of transaction as impairing vested rights, see "Constitutional Law," § 106.

Act prescribing rules of evidence as within legislative power, see "Constitutional Law," § 55.

Act regulating sales of merchandise in bulk as class legislation, see "Constitutional Law," § 208.

Act regulating sales of merchandise in bulk as infringing liberty of contract, see "Constitutional Law," § 89.

Act regulating sales of merchandise in bulk as violating private property rights, see "Constitutional Law," § 87.

Subject and title of acts, see "Statutes," §§ 117, 118.

(a) The statute relating to fraudulent conveyances extends its protection to all persons having a cause of action or suit, whether in contract or in tort.—*Gebhart v. Merfeld*, 51 Md. 322; *Welde v. Scotten*, 59 Md. 72.

(b) A. and B., citizens of Maryland, entered into an agreement in Washington, D. C., by which the former admitted an indebtedness to the latter, and agreed that certain goods attached by the latter in Norfolk, Va., should be the property of B., and directed an order to the officer in whose custody said goods were to deliver them to B., and also agreed that certain notes then given by one C. in favor of A. should be held by B. for so much of said debt as the Norfolk goods failed to pay. B. afterwards removed these goods and notes to Maryland, and an action of trover was instituted against him by D., the trustee in insolvency of A., who had in the meantime applied for the benefit of the insolvent laws of Maryland, alleging that this transaction was in fraud of the creditors of A. Held, that the validity of this agreement must be determined by the laws of Maryland.—*Gardner v. Lewis*, 7 Gill 377. [Cited and annotated, see supra, § 1.]

## § 7. Elements of fraud as to creditors.

### Cross-References.

- Indebtedness and insolvency of grantor as element of fraud, see post, §§ 54-62.
- Knowledge and intent of grantee as element of fraud, see post, §§ 155-171.
- Nature and form of transfer as element of fraud, see post, §§ 23-41.
- Nature of property or rights transferred as element of fraud, see post, §§ 43-53.
- Preferences to creditors as element of fraud, see post, §§ 114-130.
- Relation of parties as element of fraud, see post, §§ 101-108.
- Reservations or trusts for grantor as element of fraud, see post, §§ 109-113.
- Retention of possession or apparent title by grantor as element of fraud, see post, §§ 131-154.
- Want or insufficiency of consideration as element of fraud, see post, §§ 73-100.

## § 8.— In general.

(a) Whether a conveyance is fraudulent or not under St. 13 Eliz. c. 5, depends upon its being made upon a good consideration and bona fide. It is not sufficient that it is upon a good consideration or bona fide. It must be both, and, if not, it is void as to creditors.—*Glenn v. Randall*, 2 Md. Ch. 220. (See Alex. Brit. Stat. [Coe's ed.] 499.)

(b) In determining the validity of a voluntary conveyance, the question of fraud is to be ascertained from all the circumstances of the case, and not alone from the mere fact of indebtedment at the time.—*Atkinson v. Phillips*, 1 Md. Ch. 507.

## § 9.— Intent.

### Cross-References.

- Instructions as to intent of grantor, see post, § 309.
- Intent of grantee as element of fraud, see post, §§ 155-171.
- Intent of grantor, see post, §§ 64-72.
- Intent of grantor as affecting preferences, see post, § 117.
- Pleading, see post, § 263.
- Presumptions and burden of proof, see post, §§ 273-282.
- Questions for jury, see post, § 308.

(a) Any sale, contract, or arrangement, whether founded on good consideration or not, if entered into with the intent to hinder, delay, or defraud creditors, is void as to them.—*Glenn v. Grover*, 3 Md. Ch. 29. [Cited and annotated in 32 L. R. A. 40, 71, on participation in vendor's fraud invalidating transfer for good consideration.] *Zimmer v. Miller*, 64 Md. 296, 1 Atl. 858. [Cited and annotated in 18 L. R. A. 132, on usury in loans by building associations; in 29 L. R. A. 133, on application on mortgage of payments on loan association stock.]

(b) The mere intent of a grantor to defraud his creditor by a deed conveying his property, even though such conveyance purports to be an assignment for the benefit of the creditors, will invalidate the deed, though the creditor may not in fact have been defrauded.—*Main v. Lynch*, 54 Md. 658.

(c) A voluntary deed, void as against creditors antecedent to its registry, may be valid as against subsequent creditors, in the absence of any showing of intent to defraud them.—*Kane v. Roberts*, 40 Md. 590.

(d) A voluntary deed of a debtor may be impeached and set aside by subsequent creditors, in cases where the deed is executed for the purpose of defrauding them; and it cannot be doubted that a deed of a solvent grantor, made and registered in the partial execution of a purpose to defraud subsequent creditors, would, as to such creditors, be declared void upon the consummation of the fraud.—*Moore v. Blondheim*, 19 Md. 172.

## § 10.— Disposition of property.

## § 11.— Effect of transaction to delay, hinder, or defraud.

### Cross-References.

See post, §§ 24, 61, 109, 205, 213.

Effect of assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 152-155.

(a) Where the operation of a conveyance is to hinder, delay, or defraud creditors, an intent so to do is imputed to the parties.—*Whedbee v. Stewart*, 40 Md. 414. [Cited and annotated in 30 L. R. A. 467, 482, on intent to defraud sustaining attachment; in 50 L. R. A. (N. S.) 718, on assignment for creditors: provision for release.] *Schuman v. Peddicord*, 50 Md. 560; *Farrow v. Hayes*, 51 Md. 498. [Cited and annotated in 50 L. R. A. (N. S.) 718, on assignment for creditors: provision for release; in 30 L. R. A. 467, on intent to defraud sustaining attachment.]

## § 12. Elements of fraud as to subsequent purchasers.

### Cross-References.

- Retention of possession as element of fraud, see post, § 133.
- Want or insufficiency of consideration as element of fraud as to subsequent purchasers, see post, § 75.
- What constitutes intent to defraud subsequent purchasers, see post, § 68.

## § 13. Badges of fraud.

### Cross-References.

- Preferences to creditors, see post, §§ 114-130.

Reservations and trust for grantor, see post, §§ 109-113.

Retention of possession or apparent title by grantor, see post, §§ 131-154.

Transfers in anticipation of or pending suits, see post, § 66.

Want or insufficiency of consideration, see post, §§ 73-100.

#### § 14.—In general.

##### *Cross-Reference.*

See post, § 305.

(a) Where a mortgage is given to secure notes of the mortgagees to be loaned by them to the mortgagor, the fact that the mortgagees purchased the notes so loaned at a heavy discount from the broker, to whom they were given to negotiate, raises no presumption of fraud.—*Wilson v. Russell*, 13 Md. 494, 71 Am. Dec. 645. [Cited and annotated in 53 L. R. A. 362, on moral obligation as consideration.]

(b) A voluntary conveyance from father to son cannot be impeached by creditors because it may produce inequality among the children of the grantor with respect to their share of his estate.—*Bullett v. Worthington*, 3 Md. Ch. 99. (See *Worthington v. Bullitt*, 6 Md. 172.)

#### § 15.—Particular facts and circumstances.

##### *Cross-References.*

See post, § 154.

As determining necessity of submitting case to jury, see post, § 308.

(a) Where two defendants in a pending slander suit mortgaged their real property to their sisters, sold their personal property and withdrew their bank accounts, the result of such acts was to hinder, delay, and defraud the plaintiff in the collection of his judgment against them, and the mortgage, as to the mortgagors, was fraudulent.—*McCauley v. Shockey*, 105 Md. 641, 66 Atl. 625.

(b) The failure to have a policy of fire insurance on the property conveyed transferred from the father to the daughter does not show bad faith in the transaction.—*Thompson v. Williams*, 100 Md. 195, 60 Atl. 26.

(c) The fact that the conveyance antedated an in personam decree against the father by the space of six months and a few days does not show bad faith in the transaction.—

*Thompson v. Williams*, 100 Md. 195, 60 Atl. 26.

(d) The failure to have the property transferred from the father to the daughter on the assessment books does not show bad faith in the transaction.—*Thompson v. Williams*, 100 Md. 195, 60 Atl. 26.

#### § 16.—Conclusiveness and effect.

##### *Cross-Reference.*

Effect on right to assert invalidity, see post, §§ 205-225.

#### § 17. Transactions valid in inception.

##### *Cross-Reference.*

Agent's acts rendering mortgage fraudulent, see ante, § 11.

#### §§ 18-21. Transactions fraudulent in part.

##### *Cross-References.*

Admissibility of evidence of separate conveyances or transactions, see post, § 286.

Admissibility of similar conveyances or transactions to show fraudulent intent, see "Evidence," § 135.

Nature of property as affecting validity of transaction, see post, §§ 43-53.

Partial insufficiency, invalidity or illegality of consideration, see post, §§ 99, 100.

Participation of grantee in fraudulent intent, see post, § 162.

Right of secured creditor to attack validity of other claims secured by same instrument, see post, § 225.

Setting aside conveyance to the extent of creditors' claims, see post, § 313.

Fraud in assignment or trust for creditors, see "Assignments for Benefit of Creditors," § 157.

#### § 22. Purging transaction of fraud.

##### *Cross-References.*

See post, § 111.

Change of possession before levy by creditor, see post, § 149.

Substitutes for change of possession, see post, § 132.

(a) Upon principle, it would seem that a deed fraudulent in fact could not by registration be made effective against subsequent creditors, nor bar their right to impeach it.—*Moore v. Blondheim*, 19 Md. 172.

(b) Where a debtor made a family settlement of her whole property, reserving only a life estate therein, the annual value of which scarcely exceeded her debts, she being at the time over 90 years of age, the fact that she lived for 4 years longer will not relieve the settlement from the imputation of fraud arising from her failure to properly

provide for the liquidation of her liabilities.—*Williams v. Banks*, 11 Md. 198. [Cited and annotated in 47 L. R. A. (N. S.) 321, on fraudulent conveyances by one secondarily liable; in 43 L. R. A. (N. S.) 222, on purchase of paper at discount as usury.]

#### (B) NATURE AND FORM OF TRANSFER.

##### *Cross-References.*

Admissibility of instrument in evidence, see post, § 286.  
 Consideration, see post, §§ 73-100.  
 Instructions, see post, § 309.  
 Necessity of change of possession, see post, §§ 131-154.  
 Necessity of recording or filing, see post, § 154.  
 Pleading fraudulent transaction, see post, § 263.  
 Preferences to creditors, see post, §§ 114-130.  
 Questions for jury, see post, § 308.  
 Reservations and trusts for grantor, see post, §§ 109-113.  
 Validity of transaction as between parties, see post, §§ 172-178.  
 Weight and sufficiency of evidence, see post, § 299.

#### § 23. Elements or evidence of fraud in general.

##### *Cross-Reference.*

Badges of fraud, see ante, §§ 14, 15.

#### § 24. Transactions subject to attack by creditors.

##### *Cross-References.*

Clothing another with apparent title, see post, § 132.  
 Creditors entitled to attack conveyance, see post, §§ 205-225.  
 Effect of transaction as element of fraud, see ante, § 11.  
 Emancipation of minor child, see post, § 43.  
 Presumptions and burden of proof, see post, §§ 270-284.  
 Property and rights transferred, see post, §§ 43-53.  
 Rights and liabilities of grantees as to creditors, see post, §§ 181-184.  
 Sale of merchandise in bulk, see post, § 47.  
 Transactions fraudulent in part, see ante, §§ 19-21.  
 Transactions void in inception, see ante, § 17.  
 Want or insufficiency of consideration as element of fraud, see post, §§ 73-100.

(a) The fact that a deed recites the receipt of a money consideration does not render it invalid as against creditors, where the actual consideration is an indebtedness to the grantee equaling or exceeding the expressed consideration.—*Commonwealth Bank v. Kearns*, 100 Md. 202, 59 Atl. 1010.

(b) The owner of lots, under an arrangement with a builder, executed a lease to an irresponsible employee of the latter, reserving a ground rent to the owner; the understanding being that the builder was the real lessee, and that the lease was to prevent him from becoming personally liable for the ground rent. The builder was to receive a bonus for erecting a building on the lot, and was to borrow money from the owner, to be secured by mortgage of the premises. All papers necessary to accomplish the end were executed on the same day; the mortgage, which was void because tending to defraud materialmen, being executed by the employee. The lease was duly recorded. *Held*, that the lease was not invalid as to a materialman furnishing supplies for the erection of the building, by reason of the invalidity of the mortgage, on the theory that it was part of a scheme to improve the lots at the expense of materialmen; it not appearing that the owner contemplated the contracting of such debts.—*Baltimore High Grade Brick Co. v. Amos*, 95 Md. 571, 52 Atl. 582, 53 Atl. 148.

(c) Where the owner of land on which he was about to erect buildings, procured the title to be taken in the name of another, and induced the other to incumber the land for mortgages for a feigned consideration, the natural result was to hinder and delay, and thus defraud, subsequent creditors from whom the owner purchased material; they having no knowledge of such deed or mortgage.—*Baltimore High Grade Brick Co. v. Amos*, 95 Md. 571, 52 Atl. 582, 53 Atl. 148.

(d) Action of an owner of land in keeping the title in another's name, and having the latter execute a mortgage thereon, though the owner intended to contract debts for material to be used in erecting houses thereon, rendered the mortgage void, as against a person subsequently selling such supplies to the owner, as tending to hinder, delay, and defraud creditors.—*Baltimore High Grade Brick Co. v. Amos*, 95 Md. 571, 52 Atl. 582, 53 Atl. 148.

(e) A sale of national bank stock by the pledgee thereof, under an authority conferred by the terms of the pledge, is not obnoxious to the charge of having been done

in fraud of creditors, although its leading object and purpose may have been, on the part of the pledgee, to avoid liability as a stockholder, under § 12 of the National Banking Act.—*Magruder v. Colston*, 44 Md. 349, 22 Am. Rep. 47. (See U. S. Comp. Stat. 1913, § 9689.) [Cited and annotated in 36 L. R. A. 139, 140, on liability of pledgee of stock as shareholder.]

(f) To a bill of sale conveying certain slaves "in consideration for the sum of \$1,500" in hand paid by the grantee to the grantor, the grantee made affidavit that the grantor "stands justly indebted to him in the sum of \$1,500 clear of all deduction." Held, that under act 1846, c. 271, providing that no bill of sale shall be valid unless there be indorsed thereon the affidavit of the grantee stating "that the consideration set forth in such bill of sale is true and bona fide as therein set forth," the conveyance was void as against creditors.—*Denton v. Griffith*, 17 Md. 301. (See Code, art. 21, § 52.)

(g) A deed reciting that the grantors desire to convert their property as soon as possible, and conveying to trustees to sell at public sale on notice, or private sale, as soon as possible, for cash, or on reasonable credit, as they shall deem in a sound discretion most advisable and for the benefit of the creditors and the trust, with power to compromise, appoint agents, etc., and to pay (1) expenses and commissions, and (2) specified debts, and (3) to distribute the residue pro rata, is not fraudulent and void on its face as against creditors, under St. 13 Eliz.—*Berry v. Matthews*, 13 Md. 537. (See Alex. Brit. Stat. [Coe's ed.] 499.)

(h) Where a debtor's conveyance is attacked as in fraud of creditors, and the description of the property conveyed consists in comprehensive generalities, the tracts or parcels of land being described by name, without locations or boundaries, and the furniture and plantation utensils being conveyed without any schedule, such a loose and irregular description of the property is indicative of fraud.—*Duvall v. Waters*, 1 Bland 569, 18 Am. Dec. 350.

(i) A transfer of property, made for the purpose of hindering, delaying, or defraud-

ing creditors, is fraudulent and void as to such creditors.—*Stewart v. Iglehart*, 7 G. & J. 132, 28 Am. Dec. 202. [Cited and annotated in 31 L. R. A. 646, on participation in debtor's fraudulent intent invalidating transfer.]

(j) Deeds of manumission of slaves are valid, unless made to the prejudice of creditors.—*Allein v. Sharp*, 7 G. & J. 96.

## § 25. Transactions subject to attack by subsequent purchasers.

### Cross-Reference.

Intent to defraud subsequent purchasers, see post, § 71.

## § 26. Absolute transfers.

### Cross-References.

Executory consideration, see post, §§ 78-82.

Knowledge and intent of grantee, see post, §§ 155-171.

Necessity of change of possession, see post, § 139.

Sale of merchandise in bulk, see post, § 47.

Secret trust, see post, § 113.

Evidence of time of delivery of deed affecting validity of transfer, see "Deeds," § 208.

(a) An insolvent in failing health, shortly before his death, voluntarily assigned his life policy to his son, a person of limited means, and also executed to him a bill of sale of all his personal estate. The bill of sale was afterwards claimed by the grantee to have been intended as a mortgage to secure a sum much greater than the value of the property. Held, in the absence of explanation of these facts, that the bill of sale was fraudulent as to the creditors of the grantor.—*Earnshaw v. Stewart*, 64 Md. 513, 2 Atl. 734. [Cited and annotated in 21 L. R. A. 551, on bar of principle debt as bar to foreclosure of mortgage or deed of trust; in 31 L. R. A. 624, on participation in debtor's fraudulent intent invalidating transfer.]

(b) A deed otherwise void under the statute of Elizabeth cannot be sustained on the ground of a secret oral contract between the grantor and grantees that the property conveyed should be held in trust, and sold for the benefit of the grantor's creditors.—*Birely v. Staley*, 5 G. & J. 432, 25 Am. Dec. 303. (See Alex. Brit. Stat. [Coe's ed.] 499.) [Cited and annotated in 17 L. R. A. 348, on priority as to proceeds of creditors' bills; in 23 L. R. A. (N. S.) 93, on conditions precedent to equitable remedies of creditors.]

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

(c) A., in order to make B. eligible as a sheriff in the state, conveyed to him certain lands, with an agreement that they should be reconveyed, etc. B. was not elected, but had the next highest number of votes to C., who was commissioned sheriff. B. reconveyed the lands to A., and C. dying within his term, B. was commissioned according to the Constitution for the residue of the term, and gave bond; and, having become a defaulter, his sureties, who had full knowledge of the deeds and their object before they became such, paid considerable sums of money for him, and filed a bill against B., alleging that the deeds between A. and B. were fraudulent, and that the land was liable for the debts paid by the sureties. *Held*, that the case did not come under St. 13 Eliz. c. 5.—*Roberts v. Gibson's Ex'r*, 6 H. & J. 116. (See Alex. Brit. Stat. [Coe's ed.] 399.)

## § 27. Transfers as security.

### Cross-References.

Admissibility of instrument in evidence, see post, § 286.  
 Effect of good faith of mortgagee or pledgee, see post, § 166.  
 Enforcement of mortgage as between parties, see post, § 176.  
 Failure to file or record instrument, see post, § 154.  
 Preferences to creditors, see post, § 122.  
 Purging transaction of fraud, see ante, § 22.  
 Reservation of surplus for benefit of grantor, see post, § 110.  
 Right to redeem property transferred as security, see post, § 174.  
 Sale of merchandise in bulk under mortgage, see post, § 47.  
 Sufficiency of consideration, see post, § 88.  
 Sufficiency of evidence to impeach mortgage or other security, see post, § 299.  
 Transactions fraudulent in part, see ante, §§ 18-21.  
 Effect of retention of possession by mortgagor of chattels, and failure to record mortgage, see "Chattel Mortgages," §§ 184-198.  
 Validity of mortgage of real property as dependent on record, see "Mortgages," §§ 172-176.

(a) The fact that a trust deed for the benefit of creditors provides for a commission of 8 per cent. to the trustee is not such an evidence of fraud as would justify a court in declaring the deed to be of doubtful validity.—*Herzberg v. Warfield*, 76 Md. 446, 25 Atl. 664. [Cited and annotated in 48 L. R. A.

588, 589, on powers and privileges of surety and trust companies.]

## § 28. Payment or satisfaction of liabilities.

### Cross-References.

Pre-existing liability as consideration for transfer, see post, §§ 86-91.  
 Preferences to creditors, see post, § 121.  
 Validity of transaction as between parties, see post, § 175.

## § 29. Collusive legal proceedings in general.

### Cross-References.

Intent of attaching creditor, see post, § 155.  
 Possession of property after judicial sale, see post, § 140.  
 Preferences to creditors, see post, §§ 123-125.  
 Receiver of property in possession of receivers holding under collusive appointment, see post, § 305.  
 Setting aside collusive sale by receiver, see post, § 313.  
 Sufficiency of evidence to impeach, see post, § 299.  
 Wife's purchase of husband's property at public sale, see post, § 104.  
 Validity of collusive sale under chattel mortgage as against junior mortgagee, see "Chattel Mortgages," § 262.

## § 30. Confession of judgment.

### Cross-References.

Judgment notes including attorneys' fees for preferred creditors, see post, § 120.  
 Judgment to secure contingent liability, see post, § 86.  
 Preferences to creditors, see post, § 123.  
 Remedy to contest judgment, see post, § 237.  
 Ground for attachment, see "Attachment," § 42.

## § 31. Suffering levy of attachment or execution.

### Cross-References.

Intent of attaching creditor, see post, § 155.  
 Pleading, see post, § 266.  
 Proof as to fraudulent intent of attaching creditor, see post, § 271.  
 Purchase at execution sale for benefit of debtor, see post, § 110.  
 Sufficiency of evidence to show fraud, see post, § 299.

## §§ 32-38. (See Analysis.)

## § 39. Payment of premiums for insurance.

### Cross-References.

Effect of judgment setting aside transfer of policy, see post, § 315.  
 Parties to action to recover illegal payment, see post, § 252.

Right of creditors to proceeds of insurance on property conveyed, see post, § 181.

Solvency or insolvency of assignor of policy, see post, §§ 57-61.

Sufficiency of consideration for assignment of policy by parent to child, see post, § 96.

Transfer of policy as transfer of exempt property, see post, § 51.

Transfer of policy without value, see post, § 50.

Right of action by assignee for benefit of creditors, see "Assignments for Benefit of Creditors," § 228.

#### § 40. Conducting business in name of another.

##### *Cross-References.*

Employment of husband as wife's manager or agent, see post, § 104.

Questions for jury, see post, § 308.

Sufficiency of evidence to impeach transaction, see post, § 299.

(a) L. agreed to furnish liquors to W., and W. agreed that he "will carry on said business only as the agent of said L., that the stock in trade furnished as aforesaid shall be and remain the absolute property of the said L., and that all goods shall be sold for and on the account of said L., and all bills for goods sold shall be made out in the name of said W. as agent aforesaid, and in no other manner, and said W. shall account to said L. at least once a month for all goods delivered to him under this agreement, and shall pay over the wholesale price of such goods, and retain for his labor and attention in said business such profits as shall be made." *Held*, that such agreement was valid as against W.'s attaching creditors, unless they could show a want of good faith therein.—*Albert v. Lindau*, 46 Md. 334.

#### § 41. Organization of corporation.

##### *Cross-References.*

Change of possession on sale to corporation, see post, § 150.

Consideration for transfer of stock by child to parent, see post, § 96.

Evidence of debtor's insolvency, see post, § 297.

Participation of corporation in fraud, see post, § 162.

Preferences to creditors by formation of corporation or transfer of stock, see post, § 120.

Transactions between husband and wife, see post, § 104.

Transactions between parent and child, see post, § 107.

Validity of mortgage given by corporation, see post, § 74.

Fraud on bankrupt's creditors, see "Bankruptcy," § 116.

#### § 42. (Omitted from the classification used herein.)

##### (C) PROPERTY AND RIGHTS TRANSFERRED.

##### *Cross-References.*

Burden of proving that property is subject to claims of creditors, see post, § 284.

Description of property in conveyance, see ante, § 24.

Description of property in pleading, see post, § 262.

Fraud as to part of property transferred, see ante, § 19.

Necessity of change of possession as affected by nature of property, see post, § 137.

Statutory provisions, see ante, §§ 2-6.

Transactions subject to attack by creditors, see ante, §§ 24-41.

#### § 43. Property subject to claims of creditors in general.

##### *Cross-References.*

Consideration for transfer by husband to wife, or by parent to child, see post, §§ 94-96.

Interest of debtor as tenant by curtesy, see post, § 49.

Vesting husband's interest in another, see ante, § 24.

(a) Plaintiff sued defendant on October 24, 1898, and recovered judgment on April 10, 1899. Defendant executed two deeds, conveying his property to his son and daughter, one of which was recorded on April 4, 1899, and the other on April 10, 1899. Plaintiff filed a bill to set aside the conveyances as in fraud of creditors, and defendant claimed the property was purchased in 1890 with his wife's money, which was received from her parents' estate, and that the deeds were made in his name by mistake. The father of defendant's wife died in 1865, and her mother in 1899; but neither defendant nor his wife knew how much money she received from the estate, and the son and daughter paid for the property in notes executed to their mother, and neither had sufficient means to make such a purchase, and defendant continued to collect the rent and control the property after the conveyances. *Held*, that the conveyances were fraudulent.—*Hinman v. Silcox*, 91 Md. 576, 46 Atl. 1017.

#### § 44. Interest of debtor in property in general.

(a) A deed executed by a debtor and his



wife, conveying property conveyed by the debtor to the wife prior to the incurring of his indebtedness, cannot be set aside as fraudulent against the husband's creditors, without some showing going to avoid the effect of the deed to the wife.—*Mishler v. Finch*, 104 Md. 182, 64 Atl. 945.

#### § 45. Real property.

##### *Cross-Reference.*

Retention of property as affected by nature of property, see post, § 137.

#### § 46. Personal property in general.

##### *Cross-References.*

Statutory provisions, see ante, §§ 2-6.

Property transferred by decedent as assets of his estate, see "Executors and Administrators," § 57.

#### § 47. Stock in trade.

##### *Cross-References.*

Estoppel to assert invalidity, see post, § 225.

Good faith of buyer, see post, § 165.

Insolvency as element of fraud, see post, § 61.

Presumptions and burden of proof, see post, § 276.

Transaction subject to attack by creditors, see ante, § 24.

Validity of laws regulating sales in bulk, see ante, §§ 2-6.

(a) A stock of goods was sold without a prior inventory, or without the purchaser making inquiries concerning the seller's creditors, or giving notice to them of the contemplated sale, as required by act 1900, c. 579, (Code 1888, Supp. art. 83, § 18), to prevent a presumption of fraud. The purchaser paid \$256 in cash for the property, and gave the seller credit for \$104, due the purchaser for rent; and the stock of goods was not shown to have been of greater value. The purchaser testified that he purchased the goods to secure his rent, and to have a more active business in the storeroom, which he owned; that he did not know there was any claim against the seller which the latter was unable and unwilling to pay, but he made inquiries as to a judgment against the seller. *Held*, sufficient to rebut the presumption of fraud arising from the failure to comply with the statute.—*Hart v. Dean*, 93 Md. 432, 49 Atl. 661; *Hart v. Roney*, Id. (See Code 1911, art. 83, §§ 19-21; Id. [vol. 3], §§ 19, note, 101-103; act 1916, c. 371, p. 765, art. 83, § 101A.) [*Cited and annotated*

in 2 L. R. A. (N. S.) 340, on bulk sales legislation.]

(b) The act of the purchaser of a stock of goods in making inquiries as to a judgment against the seller, and whether the judgment would be binding on the goods before the issuance of an execution, does not tend to show that the sale was fraudulent.—*Hart v. Dean*, 93 Md. 432, 49 Atl. 661; *Hart v. Roney*, Id. [*Cited and annotated*, see *supra*.]

#### § 48. Rights in action.

##### *Cross-References.*

Effect of judgment setting aside transfer of life insurance policy, see post, § 315.  
Necessity of change of possession, see post, § 137.

#### § 49. Particular estates and interests.

##### *Cross-References.*

Interest of debtor in property in general, see ante, § 44.

Trust as consideration, see post, §§ 87, 92.

Validity of release of dower right, see "Dower," § 117.

#### § 50. Property or rights without pecuniary value.

##### *Cross-Reference.*

Findings as to value of good will, see post, § 310.

#### § 51. Exempt property in general.

##### *Cross-References.*

Pleading exemption, see post, §§ 262, 263, 269.

Purchase of exempt property in homestead, see ante, § 38.

Forfeiture of exemption by conveyance, see "Exemptions," § 104.

(a) Act 1862, c. 9, allows a husband to insure his life for the benefit of his wife, or to assign an existing policy of insurance to her. Such policy is entirely free from any lien of his creditors, and they have no interest in it; and the fact that at the time of such insurance or assignment he has creditors whom he is unable to pay has no significance.—*Elliott v. Bryan*, 64 Md. 368, 1 Atl. 614. (See Code, art. 45, § 8.)

(b) The act of 1854, c. 193, makes void judgments, decrees, conveyances, and assignments for fraud, or for giving undue preferences, in cases of insolvency only where there has been a petition for the benefit of the act.—*Triebert v. Burgess*, 11 Md. 452. (See Code, art. 47, §§ 8, 9.) [*Cited and annotated* in 2 L. R. A. (N. S.) 222, on uncertainty as to time as affecting right to speci-

fic performance; in 6 L. R. A. (N. S.) 588, on specific performance of contract to give security.]

(c) Act 1753, c. 36, providing that a conveyance by a non-resident shall be void unless the grantee gives bond to the creditors of the grantor, conditioned to satisfy claims to the value of the property conveyed, must be construed in connection with the act of 1704, c. 29, which limits it to conveyances made by bankrupt non-residents.—*Ward v. Morris*, 4 H. & McH. 330. [Cited and annotated in 14 L. R. A. 583, on constitutional equality of privileges, immunities and protection.]

### § 52. Homestead.

#### Cross-References.

Necessity of findings, see post, § 310.  
Presumption of fraud in disposition of homestead, see post, § 278.  
Presumptions as to value in absence of findings, see post, § 327.  
Purchase of homestead, see ante, § 38.  
Relief, see post, § 312.  
Reservation of homestead exemption, see post, § 110.  
Evidence as to homestead, see "Homestead," § 57.  
Forfeiture of right to exemption by conveyance, see "Homestead," §§ 177, 180.

### § 53. Property in other state or county.

#### (D) INDEBTEDNESS, INSOLVENCY, AND INTENT OF GRANTOR.

#### Cross-References.

Debtor's sale of merchandise in bulk, see ante, § 47.  
Insolvency of grantee, see ante, § 1.  
Instructions, see post, § 309.  
Knowledge and intent of grantee, see post, §§ 155-171.  
Pleading, see post, §§ 260, 261, 263.  
Proof, see post, §§ 272-275, 287-289, 296-298.  
Questions for jury, see post, § 308.  
Retention of possession or apparent title by grantor as element or evidence of intent to defraud, see post, §§ 131-154.  
Validity of transaction between parties, see post, §§ 172-178.  
Verdict or findings, see post, § 310.  
Conveyance by corporation when insolvent or in contemplation of insolvency, see "Corporations," §§ 542, 543.  
Discharge of debt by novation, see "Novation."  
Intent of debtor transferring property prior to bankruptcy proceedings, see "Bankruptcy," § 180.  
Intent of debtor transferring property prior to insolvency proceedings, see "Insolvency," §§ 61-63.

### § 54. Indebtedness element of fraud.

#### Cross-References.

Creditors entitled to assert invalidity of

conveyance, see post, §§ 205-225.

Evidence as to indebtedness, see post, §§ 287, 296.

(a) Upon the question whether a conveyance is void against previous creditors, an accommodation note, executed before, but not discounted until after, such conveyance, is a valid antecedent claim, whether discounted before or after maturity.—*Williams v. Banks*, 11 Md. 198. [Cited and annotated in 47 L. R. A. (N. S.) 321, on fraudulent conveyances by one secondarily liable; in 43 L. R. A. (N. S.) 222, on purchase of paper at discount as usury.]

(b) The existence of an indebtedness at the time of executing a voluntary conveyance is only prima facie evidence of fraud as against a prior creditor of the grantor.—*Worthington v. Shipley*, 5 Gill 449; *Atkinson v. Phillips*, 1 Md. Ch. 507; *Sewell v. Baxter*, 2 Md. Ch. 447; *Baxter v. Sewell*, 3 Md. 334; *Williams v. Banks*, 11 Md. 198. [Cited and annotated, see supra.]

(c) A voluntary conveyance, executed by a person largely indebted at the time, is void as against creditors.—*Worthington v. Bullett*, 6 Md. 172. (See *Bullett v. Worthington*, 3 Md. Ch. 99.)

(d) Where one seeks to avoid deeds as fraudulent under the statutes of Elizabeth, he must allege and prove existence of debts at the date of the conveyance, or that the grantor contracted debts subsequently in respect of which the deeds would be regarded as fraudulent.—*Faringer v. Ramsay*, 4 Md. Ch. 33. (See Alex. Brit. Stat. [Coe's ed.] 499.)

(e) The mere fact that the grantor was indebted at the time does not, per se, constitute a substantial ground to avoid a voluntary conveyance for fraud. The question of fraud is to be ascertained from all the circumstances of the case, and not alone from the mere fact of indebtedness at the time.—*Atkinson v. Phillips*, 1 Md. Ch. 507.

(f) The mere fact of indebtedness is not sufficient to invalidate, as against creditors, a conveyance to the grantor's child.—*Kipp v. Hanna*, 2 Bland 26.

(g) The true rule, by which the fraudulency or fairness of a voluntary conveyance is to be ascertained is founded on a comparative indebtedness; or, in other words,

on the pecuniary ability of the grantor, at that time, to withdraw the amount of the donation, without the least hazard to his creditors, or in any material degree lessening their then prospects of payment.—*Kipp v. Hanna*, 2 Bland 26.

(h) A voluntary conveyance to his children by one indebted at the time held fraudulent as to his creditors, without other evidence of a fraudulent intent.—*Hoye v. Penn*, 1 Bland 28. (See *Hoye v. Penn*, 2 H. & G. 473. Compare *Kipp v. Hanna*, 2 Bland 26.)

(i) To impeach a voluntary conveyance as fraudulent, it must be shown that the grantor was indebted at the time the conveyance was made.—*Bohn v. Headley*, 7 H. & J. 257. [Cited and annotated in 21 L. R. A. 695, 696, on undelivered written transfer or assignment of property as gift.]

#### § 55. Assumption of debts by grantee.

##### Cross-Reference.

Assumption of liability as consideration for conveyance, see post, § 84.

#### § 56. Solvency of grantor.

##### Cross-Reference.

Evidence as to insolvency, see post, §§ 272, 288, 297.

#### § 57.— In general.

(a) H. mortgaged his entire property to A. to secure indebtedness to the mortgagee and other parties, and the mortgage was duly recorded. After a release of the mortgage had been executed by A. to H., though the part of the indebtedness to A. was still existing, H. bought goods on credit from C. Thereafter H. again mortgaged his property to secure his indebtedness to A. Held, that as there was no evidence of fraud or corrupt dealing in the transaction between H. and A., and as H. was solvent to the time of his death, which occurred shortly after the execution of the second mortgage, C. was not entitled to have the mortgage vacated, particularly as it appeared, further, that C. would have sold goods to the same amount and on the same terms to H., even if a release of the mortgage from A. to H. had not been executed and recorded.—*Homer v. Grosholz*, 38 Md. 520.

(b) A voluntary deed of a debtor may be impeached and set aside by subsequent creditors in cases where the deed is executed for

the purpose of defrauding them; and it cannot be doubted that a deed of a solvent grantor, made and registered in the partial execution of a purpose to defraud subsequent creditors, would, as to such creditors, be declared void upon the consummation of the fraud.—*Moore v. Blondheim*, 19 Md. 172. (See *Williams v. Banks*, 11 Md. 198.)

(c) The presumption of fraud arising from a voluntary conveyance by one indebted may be repelled by evidence that grantor, at the time of the gift, which was to his daughter, was in prosperous circumstances, possessed of ample means to pay all his debts, and that the settlement was a reasonable provision according to the child's situation and condition in life.—*Baxter v. Sewell*, 3 Md. 334. [Cited and annotated in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

(d) An indebtedment at the time of making a voluntary conveyance is not evidence of a fraudulent purpose, even with respect to a prior creditor, where the grantor, at the time of the gift, was in prosperous circumstances, possessed of ample means to pay his debts, and the settlement upon the child was a reasonable provision according to his or her station or condition in life.—*Sewell v. Baxter*, 2 Md. Ch. 447. [Cited and annotated in 20 L. R. A. 109, 110, 25 L. R. A. (N. S.) 1207, on parol evidence as to consideration of deed.]

#### § 58.— Retention of property sufficient to pay debts.

##### Cross-Reference.

Effect of failure to record conveyance, see post, § 154.

(a) Courts will not interfere to set aside a conveyance, as fraudulent against creditors, if it appear that there is property other than that conveyed out of which their claims can be satisfied.—*Goodman v. Wineland*, 61 Md. 449; *Christopher v. Christopher*, 64 Md. 583, 3 Atl. 296. [Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors; in 24 L. R. A. (N. S.) 415, on parol evidence to show true nature of transaction where recited consideration of deed not shown paid; in 20 L. R. A. 107, on parol evidence as to consideration of deed.]

(b) A bill to set aside a voluntary conveyance as fraudulent need not allege that the grantor had not ample other means to pay

all his debts at the date of filing the bill, as well as of executing the conveyance; the date of the impeached conveyance being the particular time when the sufficiency of the debtor's means is to be inquired into.—*Goodman v. Wineland*, 61 Md. 449.

(c) A married woman may purchase real estate with money furnished her from time to time by her husband, the latter being in prosperous circumstances and possessed of abundant means to pay all his debts, and take a conveyance thereof in her own name; and such real estate cannot be subjected to the payment of debts which her husband owed at the date of the purchase.—*Warner v. Dove*, 33 Md. 579. [Cited and annotated in 67 L. R. A. 598, on grantee's attack on judgment on which action to set aside conveyance as fraudulent based.]

(d) A valuable, as well as a good, consideration for the deed having been shown, and the fact having been established that at the time of making the conveyance the grantor had other property sufficient to pay all his indebtedness, the deed was held valid against creditors.—*Ellinger v. Crowl*, 17 Md. 361. [Cited and annotated in 20 L. R. A. 111, on parol evidence as to consideration of deed.]

(e) If the remaining property of a voluntary grantor be incumbered, so that his creditors would meet with delay, difficulty, or expense in obtaining payment, the conveyance will be void as to them.—*Williams v. Banks*, 11 Md. 198. [Cited and annotated in 47 L. R. A. (N. S.) 321, on fraudulent conveyances by one secondarily liable; in 43 L. R. A. (N. S.) 222, on purchase of paper at discount as usury.]

(f) In an action to set aside a transfer on the ground that it was fraudulent as to creditors, a claim that there remains in the debtor's hands sufficient assets to pay his debts will not be sustained if there is reasonable doubt as to their sufficiency.—*Williams v. Banks*, 11 Md. 198. [Cited and annotated, see supra.]

(g) Where the debts due by the grantor in a voluntary conveyance of all her property, excepting a life estate in it and about \$50, amounted almost to the full income of her estate, exclusive of her maintenance, and she was at the time of its execution over 90 years of age, a court will not consider her in

such prosperous circumstances at the date of the settlement as to render it a reasonable provision for her family, leaving no doubt of her ample means to pay her debts, which depended entirely upon her life estate.—*Williams v. Banks*, 11 Md. 198. [Cited and annotated, see supra.]

(h) Though a father has sufficient remaining property to pay his debts at the time of a voluntary conveyance to his son, yet if the remaining property be incumbered, or so situated that difficulties, expense, or litigation must be encountered before creditors can realize their claims therefrom, they are hindered and delayed, and the conveyance must fail.—*Bullett v. Worthington*, 3 Md. Ch. 99. (Affirmed in *Worthington v. Bullett*, 6 Md. 172.)

(i) The rule by which to determine whether a voluntary conveyance to children of the grantor is fraudulent as to creditors or not is founded on the ability of the grantor to withdraw the amount of the property so conveyed from his funds, without hazarding his creditors or in any material degree lessening their prospects of payment. The mere fact that the grantor was indebted at the time is not sufficient to avoid such conveyance.—*Kipp v. Hanna*, 2 Bland 26.

#### § 59. Security for debts of grantor.

#### § 60. Solvency of debtor liable primarily or jointly with grantor.

##### Cross-Reference.

Necessity of pursuing co-obligor as condition precedent to suit to set aside conveyance, see post, § 241.

#### § 61. Insolvency element of fraud.

##### Cross-References.

See ante, §§ 57, 58.

Evidence as to insolvency, see post, §§ 272, 297.

Findings, see post, § 310.

Insolvency as obviating necessity of judgment, lien or exhaustion of legal remedy as prerequisite to suit to set aside conveyance, see post, § 241.

Instructions, see post, § 309.

Insurance for benefit of family, see ante, § 39.

Knowledge of or notice to grantee, see post, §§ 155-171.

Pleading, see post, § 261.

Questions for jury, see post, § 308.

(a) The fact that a grantor is embarrassed and in failing circumstances will not render

void a deed made by him to one creditor, to the exclusion of others, provided the deed be made in good faith in payment of an honest debt.—*Totten v. Brady*, 54 Md. 170. [Cited and annotated in 31 L. R. A. 616, on participation in debtor's fraudulent intent invalidating transfer; in 36 L. R. A. 345, on creditor's right to buy property from debtor to satisfy debt.]

(b) Claims of creditors cannot be defeated by a subsequent assignment of all the debtor's property in trust for his wife and children.—*Greer v. Baughman*, 13 Md. 257.

(c) In an action by an execution purchaser to have set aside as fraudulent a deed by the debtor executed and delivered prior to the judgment, in the absence of evidence that the debtor had other property than that conveyed by the deed, which was without consideration, and where the answer admitted that the debtor had become dependent on the grantee in such deed for a home and support, the deed should be declared void.—*Baxter v. Sewell*, 3 Md. 334. [Cited and annotated in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

(d) Conveyances to the debtor's daughter without consideration will be set aside as fraudulent, where they embraced all the grantor's property, real and personal, and at the time of executing them grantor was greatly in debt and insolvent.—*Swan v. Dent*, 2 Md. Ch. 111.

(e) A conveyance, purporting to be made for a pecuniary consideration, will be set aside by a court of equity upon proof that the grantor was insolvent at the time, knew himself to be so, and executed the deed for the purpose of injuring and defrauding his creditors.—*Atkinson v. Phillips*, 1 Md. Ch. 507.

(f) A voluntary conveyance will be declared void against creditors where the grantor could not at the time have withdrawn the amount from his estate without hazard to his creditors or materially lessening their prospects of payment.—*Kipp v. Hanna*, 2 Bland 26.

(g) A voluntary conveyance of negro slaves, made by a father to his daughter, when loaded with debt and involved in embarrassments approximating to insolvency, and when his estate is not adequate to the

payment of the claims against him, is fraudulent and void, as against a prior creditor seeking to impeach it.—*Worthington v. Shipley*, 5 Gill 449.

(h) Insolvency of the grantor is a badge of fraud.—*Worthington v. Shipley*, 5 Gill 449.

## § 62. Inability to pay debts constituting insolvency.

*Cross-Reference.*

See ante, §§ 57-61.

## § 63. Intent to defraud pre-existing creditors.

*Cross-References.*

Creditors entitled to assert invalidity, see post, 206.

Evidence as to intent of grantor, see post, §§ 273, 289, 298.

Good faith of grantor, see post, § 72.

Instructions, see post, § 309.

Intent of grantor as element of fraud in general, see ante, § 9.

Intent to defeat other creditors by preference, see post, § 117.

Intent to defraud subsequent creditors, see post, §§ 69, 70.

Knowledge and intent of grantee, see post, §§ 155-171.

Pleading, see post, § 263.

Questions for jury, see post, § 308.

## § 64.— In general.

*Cross-Reference.*

Sale on credit with intent to defraud, see ante, § 26.

(a) For a conveyance of property to be valid as against creditors, the transfer must be bona fide, as well as for value.—*Mundy v. Jacques*, 116 Md. 11, 81 Atl. 289.

(b) Where a father conveyed certain property to his son, and thereafter the father permitted a mortgage on certain property to become in default and the property to become dilapidated, so that on its sale the proceeds were insufficient to pay the mortgage debt, it was not sufficient evidence of a fraudulent intent on the part of the father in making such conveyance, so as to render the son liable in a suit to set aside the conveyance and render the property subject to the balance due on the mortgage debt, where such suit was brought some six years after the execution of the conveyance.—*Commonwealth Bank v. Kearns*, 100 Md. 202, 59 Atl. 1010.

(c) In consideration of a large sum of money paid in cash, a son sold his father all

his property. A deed and bill of sale were executed and filed early the next day, after a large part of the property, consisting of a stock of goods, had been attached. The father knew of the attachment, and that the son had many other debts that would soon mature. After the sale, a corporation was organized, of which the father was president, and the son general manager. It was proved that the corporation used a part of the goods purchased by the father, who refused to say what became of the goods he purchased. *Held*, the sale was fraudulent and void as against the son's creditors.—*Chatterton v. Mason*, 86 Md. 236, 37 Atl. 960.

#### § 65.— One or more creditors.

#### § 66.— Pending actions or other proceedings.

##### *Cross-References.*

Claims for tort as constituting one a creditor, see post, § 215.

Injunction to restrain disposition of property pending suit, see post, § 304.

Knowledge of or notice to grantee of suits, see post, § 159.

(a) Where a husband, pending suit by his creditors, conveyed all his real estate to his wife, in consideration of various sums loaned to him by her out of money received by her since her marriage from her father and his estate, and which her husband had promised to repay, *held*, that the deed, while good as between the husband and wife, was void as to creditors.—*Bayne v. State*, 62 Md. 100. [Cited and annotated in 36 L. R. A. 343, on creditor's right to buy property from debtor to satisfy debt; in 56 L. R. A. 825, 836, on burden of proof of husband's debt to wife for property received from her.]

(b) Although a bill of sale be made on good consideration, yet if it was executed by the grantor for the purpose of defrauding the plaintiff in an action of slander then pending against him, or preventing her from collecting a judgment, should one be recovered, and the grantee in the bill of sale had knowledge of and participated in this purpose, it comes within St. 13 Eliz. c. 5, and is void.—*Cooke v. Cooke*, 43 Md. 522. (See Alex. Brit. Stat. [Coe's ed.] 499.) [Cited and annotated in 32 L. R. A. 34, 36, 40, 42, on participation in vendor's fraud invalidating transfer for good consideration; in 41 L. R. A. (N. S.) 10, 12, on admissibility of vendor's declarations out of court, as to pur-

pose in making transfer attacked as fraudulent.]

#### § 67.— Preventing sacrifice of property.

#### §§ 68-70. Intent to defraud subsequent creditors.

##### *Cross-References.*

Conveyances in trust for grantor, see post, § 111.

Creditors entitled to assert invalidity, see post, §§ 208-210.

Evidence as to intent, see post, §§ 274, 298.

Pleading, see post, § 263.

(a) Where a debtor gives his single bill for a debt previously contracted by him, and judgment is recovered upon such bill against the surety, a deed of manumission of slaves, made by the debtor about a year before the execution of the single bill, but subsequent to the contracting of the greater part of the debt, did not prejudice the rights of the surety.—*Morsell v. Baden*, 22 Md. 391. [Cited and annotated in 23 L. R. A. (N. S.) 57, on conditions precedent to equitable remedies of creditors.]

#### § 71. Intent to defraud subsequent purchasers.

##### *Cross-References.*

Burden of proving intent to defraud subsequent purchasers, see post, § 275.

Right of subsequent purchaser to assert invalidity, see post, § 224.

#### § 72. Good faith of grantor in conveyance procured by fraud of grantee.

##### *Cross-References.*

Fraudulent intent of grantor as element of fraud in general, see ante, § 9.

Intent of grantee, see post, §§ 155-171.

Validity of transaction as between parties, see post, § 172.

#### (E) CONSIDERATION.

##### *Cross-References.*

Effect as charging grantee with notice of fraud, see post, § 158.

Effect of good faith of grantee, see post, §§ 168, 169.

Effect of misdescription of consideration, see ante, § 24.

Grantee as bona fide purchaser, see post, § 187.

Instructions, see post, § 309.

Judgment notes including attorneys' fees for preferred creditors, see post, § 120.

Payment and recovery of consideration as dependent on validity of transaction as between parties, see post, § 177.

Payment of consideration as affecting presumption from retention of possession, see post, § 271.

Payment of consideration by grantee after notice of fraud, see post, § 160.

Pleading, see post, § 263.

Proof, see post, §§ 277, 291, 300.

Purchaser from grantee as bona fide purchaser, see post, § 200.

Questions for jury, see post, § 308.

Reimbursement of grantee, see post, § 183.

Solvency or insolvency of grantor, see ante, §§ 57-63.

Validity of transaction as between parties, see post, §§ 172-178.

Verdict and findings, see post, § 310.

For transfer by debtor prior to bankruptcy proceedings, see "Bankruptcy," § 181.

For transfer by debtor prior to insolvency proceedings, see "Insolvency," § 63.

### § 73. Want or insufficiency element of fraud.

#### Cross-References.

Effect of insolvency of grantor, see ante, §§ 61, 62.

Effect of solvency of grantor, see ante, §§ 57-60.

Nature of property or rights transferred, see ante, §§ 43-53.

Transactions between husband and wife, see post, § 95.

Transactions between parent and child, see post, § 96.

### § 74.—As to creditors.

#### Cross-References.

Creditors entitled to assert invalidity, see post, §§ 205-225.

Intent to defraud creditors, see ante, §§ 64-70.

Partial insufficiency or failure, see post, § 99.

Transactions between husband and wife, see post, § 95.

Transactions between parent and child, see post, § 96.

(a) A voluntary conveyance is void as to existing creditors of a grantor, though there was no fraudulent intent in making it.—*Dorn v. Bayer*, 16 Md. 144; *Goodman v. Wineland*, 61 Md. 449.

(b) A conveyance made without consideration, for the purpose of defrauding creditors of the grantor, is void as to such creditors.—*Ward v. Hollins*, 14 Md. 158. [Cited and annotated in 21 L. R. A. 53, on purchaser at judicial sale as bona fide purchaser.]

(c) Inadequacy of consideration is a badge of fraud.—*City of Baltimore v. Williams*, 6 Md. 235.

(d) A deed resting upon an inadequate money consideration, although valid between the parties, may be assailed in chancery by creditors solely upon the ground of such in-

adequacy; and the court will in their favor consider it as fraudulent or as voluntary pro tanto.—*Worthington v. Bullitt*, 6 Md. 172. (See *Bullett v. Worthington*, 3 Md. Ch. 99.)

(e) If a conveyance is not upon good consideration, the fact that it was made in good faith will not render it valid as against creditors.—*Glenn v. Randall*, 2 Md. Ch. 220.

### § 75.—As to subsequent purchasers.

#### Cross-References.

Rights and liabilities of purchasers from grantor, see post, §§ 189-192.

Right to assert invalidity, see post, § 224.

(a) A subsequent sale to a purchaser without notice by a person who has made a voluntary settlement is presumptive evidence of fraud.—*Cooke v. Kell*, 13 Md. 469.

### § 76. Nature and adequacy.

#### Cross-References.

Consideration partly fictitious, see post, § 100.

Marriage as consideration, see post, § 94.

Natural affection, see post, § 93.

Nature of debts preferred, see post, §§ 126-128.

Transactions between husband and wife, see post, § 95.

Transactions between parent and child, see post, § 96.

(a) The loaning of money to an individual, the same being used by him in the business of a corporation, did not render it the lender's debtor, so as to render a mortgage by the corporation securing the loan valid against creditors.—*Mowen v. Nitsch*, 103 Md. 685, 62 Atl. 582.

(b) On an issue as to the validity of a mortgage given by a corporation as against creditors, evidence held to show that the mortgage was given, not to secure an indebtedness of the corporation, but to secure the individual indebtedness of an officer thereof.—*Mowen v. Nitsch*, 103 Md. 685, 62 Atl. 582.

(c) A valuable, as well as a good, consideration for the deed having been shown, and the fact having been established that at the time of making the conveyance the grantor had other property sufficient to pay all his indebtedness, the deed was held valid against creditors.—*Ellinger v. Crowl*, 17 Md. 361. [Cited and annotated in 20 L. R. A. 111, on parol evidence as to consideration of deed.]

(d) Under the statute of Elizabeth, a deed, to be good against creditors, must be made

both upon a valuable consideration and bona fide.—*Glenn v. McNeal*, 3 Md. Ch. 349. (See Alex. Brit. Stat. [Coe's ed.] 499.)

(e) To support a deed against the claims of creditors, it must not only be founded upon a valuable and full consideration, but it must be bona fide. When a transfer of property rests upon a valuable consideration, it is not open to impeachment, unless the party assailing it can show affirmatively that the design was fraudulent; but such design may be shown from circumstances.—*Anderson v. Tydings*, 3 Md. Ch. 167. [Cited and annotated in 36 L. R. A. 342, on creditor's right to buy property from debtor to satisfy debt; in 56 L. R. A. 842, on burden of proof of husband's debt to wife for property received from her.]

### § 77. Sufficiency in general.

#### Cross-References.

Pre-existing debt, see post, § 85.  
Transactions between husband and wife, see post, § 95.  
Transactions between parent and child, see post, § 96.

(a) The sale of property for \$200, which is worth \$700 or \$800, does not show such a glaring inadequacy of consideration as will of itself stamp the transaction with fraud.—*Feigley v. Feigley*, 7 Md. 537, 61 Am. Dec. 375. [Cited and annotated in 3 L. R. A. (N. S.) 776, on husband's right to give away his personality without wife's consent; in 18 L. R. A. (N. S.) 1156, on right of wife to relief against transfer made or contemplated by husband in fraud of her support.]

(b) A deed should not be deemed voluntary because no consideration appears on its face; but a consideration may be averred and resorted to, although not expressed, and any consideration, however small, will be sufficient.—*Hannan v. Towers*, 3 H. & J. 147, 5 Am. Dec. 427. [Cited and annotated in 30 L. R. A. 324, on tenancy by entireties.]

### § 78. Executory character in general.

#### Cross-References.

Sales on credit, see ante, § 26.  
Transactions between parent and child, see post, § 96.

### § 79. Future services.

#### Cross-References.

Services of child, see post, § 96.  
Validity of judgment notes including attorneys' fees, see post, § 120.

### § 80. Future support.

#### Cross-References.

Future support as affecting grantee's liability to creditors, see post, § 182.  
Reservation for benefit of grantor, see post, § 110.  
Transactions between parent and child, see post, § 96.

### § 81. Future advances.

#### Cross-References.

Validity, as between parties, of mortgages to secure advances, see "Chattel Mortgages," § 22; "Mortgages," § 16.

(a) Bona fide deeds to secure future loans are not necessarily fraudulent as to creditors.—*Wilson v. Russell*, 13 Md. 494, 71 Am. Dec. 645. [Cited and annotated in 53 L. R. A. 362, on moral obligation as consideration.]

(b) A mortgage made in contemplation of insolvency to secure an indefinite amount of future advances will be set aside at the instance of creditors as in violation of act 1825, c. 50, passed to prevent the acquisition of liens on property to the prejudice of creditors for claims never contemplated by the parties at the time of its execution.—*Cole v. Albers*, 1 Gill 412. (See Code, art. 66, § 2.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

### § 82. Promissory notes, acceptances, and indorsements.

#### Cross-Reference.

Sales on credit as hindering and delaying creditors, see ante, § 26.

### § 83. Security to indorser, surety, or guarantor.

#### Cross-References.

Preference of sureties, see post, § 128.  
Transactions between husband and wife, see post, § 95.

(a) A deed of land to parties who have indorsed notes for the grantor, at his request, to indemnify them against loss, is founded on good consideration, and vests the grantor's interest in the property in the grantees until the deed has performed its office of indemnifying them against loss in consequence of the indorsement. Such deed cannot be impeached at the instance of a creditor of the grantor.—*Griffith v. Frederick County Bank*, 6 G. & J. 424. [Cited and annotated in 23 L. R. A. (N. S.) 14, on conditions precedent to equitable remedies of creditors.]



(b) Where a principal obligor conveyed property to his surety, a short time before a judgment on the bond against the principal, to indemnify the surety against his liability and to secure certain debts due from the principal to him, on a bill by the creditor the court decreed that the property should be sold and the proceeds first applied to satisfy the creditor's claims.—*Amoss v. Robinson*, 2 H. & J. 320.

#### § 84. Assumption of liability.

##### *Cross-Reference.*

Assumption of debts as affecting indebtedness of grantor, see ante, § 55.

#### §§ 85-91. Pre-existing liability.

##### *Cross-References.*

See ante, § 30.

Admissibility of evidence of pre-existing liability, see post, § 291.

Effect of misrecital of consideration, see ante, § 24.

Form of transfer in general, see ante, § 28.

Moral obligation, see post, § 92.

Preferences to creditors, see post, §§ 121, 122, 128.

Nature and form of transfers, see ante, § 27.

Sufficiency of evidence to show pre-existing liability, see post, § 300.

Transactions between husband and wife, see post, § 95.

Transactions between parent and child, see post, § 96.

(a) Defendant had been in the employment of a brewery company, and had embezzled amounts which, together with another sum which he owed the company for borrowed money, were about \$8,000. There was \$5,000 due on the purchase price of the land. For the purpose of settling his indebtedness to the company, he conveyed to it the land so purchased. The consideration stated in the deed was \$13,000, and it was not shown that the property was worth more than the consideration. *Held*, that the conveyance was not fraudulent.—*Washington Brewery Co. v. Carry*, 75 Md. xv, memorandum case, 24 Atl. 151, full report.

#### § 92. Moral obligation.

##### *Cross-Reference.*

Reconveyance of property fraudulently conveyed, see ante, § 49.

#### § 93. Natural affection in general.

##### *Cross-References.*

Preferences to relatives, see post, § 118.

Relationship of parties as affecting burden of proving consideration, see post, § 277.

Relationship of parties as element or evidence of fraud, see post, §§ 101-108.

(a) If the grantor be not indebted to such a degree as that a deed of settlement will deprive creditors of an ample fund for the payment of their debts, the consideration of natural love and affection will support the deed, although a voluntary one, against creditors, because it is free from the imputation of fraud.—*Atkinson v. Phillips*, 1 Md. Ch. 507.

#### § 94. Marriage and marriage settlements.

##### *Cross-Reference.*

Validity of unrecorded contract, see post, § 154.

(a) A written settlement, or an agreement in writing to make one, before marriage, in consideration thereof, is valid against creditors.—*Albert v. Winn*, 5 Md. 66. [*Cited and annotated* in 11 L. R. A. (N. S.) 595, on postnuptial written contract to confirm antenuptial oral contract relinquishing rights.]

(b) A settlement by a brother on his sister after her marriage, reciting an antenuptial parol contract, is not valid against creditors, because as to them it is a voluntary conveyance; the subsequent written instrument not relating back to the prior parol agreement, so as to make the date of that the effective date of the settlement.—*Albert v. Winn*, 5 Md. 66. [*Cited and annotated*, see supra.]

(c) An antenuptial settlement, made in consideration of marriage, is good, though the grantor be then indebted.—*Betts v. Union Bank*, 1 H. & G. 175, 18 Am. Dec. 283. [*Cited and annotated* in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

#### § 95. Transactions between husband and wife.

##### *Cross-References.*

Admissibility of evidence, see post, § 291.

Burden of proof, see post, § 277.

Indebtedness, insolvency, and intent of grantor as elements of fraud, see ante, §§ 54-72.

Instructions, see post, § 309.

Payment of premiums for insurance, see ante, § 39.

Persons entitled to assert invalidity, see post, §§ 208-210.

Pleading, see post, § 263.  
 Preferences, see post, § 118.  
 Property transferred, see ante, § 43.  
 Questions for jury, see post, § 308.  
 Relationship as element or evidence of fraud, see post, §§ 104-106.  
 Sufficiency of evidence, see post, § 300.  
 Transfer of property held in trust, see ante, § 49.

(a) The consideration expressed in a deed for his entire property from a husband to his wife, executed about the time he was being sued, was "\$2,100 heretofore received by him." A note for \$2,200 for prior indebtedness was executed to creditors three days before the deed was recorded. The wife had no property at her marriage, or means of acquiring any, except by keeping a few boarders during a part of six or seven years. She had a bank account during this time, and deposited amounts for more than she probably made from boarders about the time her husband executed the deed and became insolvent. She had had his notes in various amounts prior to the deed, several amounting to \$177, which might have been the basis of a claim against him when the deed was made; but there was no evidence that they were unpaid, or connecting them, or checks given him by her at various times, with the consideration mentioned in the deed. *Held*, that, against antecedent creditors, the deed was not shown to be bona fide.—*Stockslager v. Mechanics' Loan & Savings Institute*, 87 Md. 232, 39 Atl. 742. [Cited and annotated in 56 L. R. A. 825, 829, 830, 832, on burden of proof of husband's debt to wife for property received from her; in 43 L. R. A. (N. S.) 692, on validity of arrangement for household finances as against husband's creditors.]

(b) When a wife gives her husband money to be employed in his business to the best advantage, the money belongs to him, and forms no valuable consideration for a conveyance by him to her.—*Diggs v. McCullough*, 69 Md. 592, 16 Atl. 453. [Cited and annotated in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

(c) Where property is conveyed by a husband to his wife in consideration of love and affection, the conveyance is void as against existing creditors.—*Milholland v. Tiffany*, 64 Md. 455, 2 Atl. 831. [Cited and annotated in 5 L. R. A. (N. S.) 839, 844, on right of subrogation of one advancing money to pay

off lien or encumbrance on security which proves defective.]

(d) A recital of the consideration in a deed to a debtor's wife, though prima facie true, must, in order to avail against subsisting creditors, evidence an obligation on the part of the husband that the wife could have enforced against him or his estate, and the mere fact that she had let him have money, there being no express promise to repay, would not be sufficient.—*Grover & Baker Sewing Mach. Co. v. Radcliff*, 63 Md. 496. [Cited and annotated in 36 L. R. A. 343, on creditor's right to buy property from debtor to satisfy debt; in 56 L. R. A. 832, on burden of proof of husband's debt to wife for property received from her.]

(e) A married woman, being entitled to a distributive share of the proceeds of the real estate of her father, sold under proceedings for a partition, sold her share with the consent of her husband, and took the note of the purchaser for the purchase money. This note the husband collected as a loan by his wife to him upon an agreement with her to repay it to her, with interest, and gave her his note for the amount due her. Afterwards the husband, becoming embarrassed, in order to protect his wife's claim, paid two judgments against himself and caused them to be entered to her use. The validity of this transaction was impeached by subsequent creditors of the husband as in fraud of them. *Held*, that the husband did not reduce the chose in action of his wife into his possession by virtue of his marital rights, but in pursuance of his agreement with his wife obtained control of the note; and his agreement to repay her the amount he collected on it was founded upon an adequate consideration.—*Drury v. Briscoe*, 42 Md. 154. [Cited and annotated in 26 L. R. A. (N. S.) 522, on moral obligation as consideration for express promise.]

(f) A voluntary conveyance from husband to wife is void as against his creditors, irrespective of his want of intention to commit a fraud.—*Myers v. King*, 42 Md. 65.

(g) A bill of sale, executed by the husband to secure to his wife a sum of money belonging to her in her own right, but received by him and invested in his business with her knowledge and acquiescence, is void as to prior creditors, where there was no agree-

ment by the husband to repay the money, and the creditors are without other security for their demands.—*Kuhn v. Stanfield*, 28 Md. 210, 92 Am. Dec. 681. [Cited and annotated in 36 L. R. A. 343, 348, on creditor's right to buy property from debtor to satisfy debt.]

(h) A voluntary conveyance by an insolvent debtor to his wife is good as against subsequent creditors, unless made with intent to defraud.—*Niller v. Johnson*, 27 Md. 6. [Cited and annotated in 62 L. R. A. 845, on comparison of handwriting; in 67 L. R. A. 595, on grantee's attack on judgment on which action to set aside conveyance as fraudulent based.]

(i) Where the consideration of A.'s deed, conveying land to a trustee in trust for his wife's separate use, consisted of his agreement so to convey if she would unite in assigning a mortgage due to her, in part payment for land bought by him, such consideration is good, and it is valid as against simple contract creditors at the time of execution.—*Stockett v. Holliday*, 9 Md. 480. [Cited and annotated in 20 L. R. A. 111, on parol evidence as to consideration of deed; in 56 L. R. A. 832, on burden of proof of husband's debt to wife for property received from her.]

(j) Property purchased by a feme covert with money paid to her in consideration of her releasing her potential right of dower in land sold by her husband, is not subject to attachment by her husband's creditors, since act 1853, c. 245, which invests her with the powers of a feme sole as to such property.—*Unger v. Price*, 9 Md. 552. (See Code, art. 45, §§ 1-4, 12.)

(k) A husband received the proceeds of property which descended to his wife from her grandmother, and applied it to the purchase of land, taking the deed in his own name. Five years afterwards the land was conveyed to his wife. Held, that the land belonged to the husband's creditors.—*Wylie v. Basil*, 4 Md. Ch. 327. [Cited and annotated in 23 L. R. A. (N. S.) 34, 37, 116, on conditions precedent to equitable remedies of creditors.]

(l) A trust resulting in favor of a married woman from a purchase by her husband of land with her money cannot be asserted as against the rights of subsequent creditors of the husband.—*Brooks v. Dent*, 1 Md. Ch. 523.

(m) A postnuptial voluntary settlement by a debtor for his wife and children is valid as to subsequent creditors.—*Atkinson v. Phillips*, 1 Md. Ch. 507.

## § 96. Transactions between parent and child.

### Cross-References.

Burden of proving consideration, see post, § 277.

Emancipation of child as transaction in fraud of creditors, see ante, § 43.

Indebtedness, insolvency and intent of grantor as elements of fraud, see ante, §§ 54-72.

Pleading, see post, § 263.

Preferences, see post, § 118.

Questions for jury, see post, § 308.

Relationship of parties as element or evidence of fraud, see post, § 107.

Sufficiency of evidence, see post, § 300.

Transfer of property held in trust, see ante, § 49.

(a) A father conveyed a tract of property to his son, worth, according to a contended estimate, \$14,000, which, however, was subject to mortgages exceeding \$5,000, in consideration of a discharge of debts amounting to at least \$6,000, the payment of other debts, and life support. The recited consideration of the deed was \$6,000 in cash. The deed was recorded, and the son entered into possession and enjoyment of the property, and there was no evidence that he accepted the conveyance with a design to defraud other creditors of the father. Held, that the conveyance was not fraudulent as to such other creditors.—*Commonwealth Bank v. Kearns*, 100 Md. 202, 59 Atl. 1010.

(b) A surety for an insolvent principal conveyed all his property—a large amount—to his son and daughter, shortly before his death, taking an agreement from them to pay him a life annuity if he should demand it. The conveyance to the daughter appeared to be voluntary on its face. The deed to the son recited a payment of a consideration of \$17,000, and the property conveyed to him was worth \$40,000. The son paid nothing at the time of receiving the deed, but afterwards paid debts of his father to the amount of about \$17,000. Held, that the conveyances were voluntary, and should be set aside so far as they conflicted with the rights of the creditor.—*Benson v. Benson*, 70 Md. 253, 16 Atl. 657.

(c) A., being indebted to W., purchased certain land, paying fully for the same, and caused the vendors to convey the property to F., his infant daughter; said F. having no means to pay for the land. Subsequently, during the pendency of a suit for the debt, brought by W. against A., A. and F. conveyed the property to a half-brother, G., who took it with notice of all the facts. *Held*, under the circumstances, that the deed to F. was in fraud of creditors, and that F. must be regarded as having taken the real estate in trust for her father and his creditors.—*Biddinger v. Wiland*, 67 Md. 359, 10 Atl. 202. [Cited and annotated in 31 L. R. A. 633, on participation in debtor's fraudulent intent invalidating transfer; in 32 L. R. A. 40, on participation in vendor's fraud invalidating transfer for good consideration; in 32 L. R. A. 679, on admissions and waivers by fiduciaries in actions.]

(d) A mother conveyed by deed to her son, for the named consideration of \$400, certain property which she had lately bought for that sum, but which she repaired at an expense double that sum. To avoid the inference of fraud, arising from the inequality between the value of the property and the consideration named in the deed, the son alleged an indebtedness from his mother on account of his services as her clerk. It was claimed that repairs to the amount of \$900 were put on the property by the mother after the conveyance to her son, but no discovery was sought as to how he compensated her for the same. It was denied that the repairs were made subsequent to the deed, but that the repairs were paid for by the indebtedness aforesaid. From the testimony it appeared improbable that the son, with his means of raising money, could have saved enough to pay the \$400, and to create a fair indebtedness from his mother for the \$800. *Held*, that, as against the creditors of the mother, the deed was fraudulent.—*McNeal v. Glenn*, 4 Md. 87.

(e) A voluntary settlement by a father on his child is only prima facie fraudulent as to existing creditors, and the presumption of fraud may be rebutted and controlled.—*Worthington v. Shipley*, 5 Gill 449; *Baxter v. Sewell*, 3 Md. 334. [Cited and annotated in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

(f) A father conveyed to his son a tract of land of the value of \$20,000 upon a named moneyed consideration of \$12,000, while in fact \$5,000 only was paid in money by the son. *Held*, that the conveyance was voluntary to the extent of the excess of the value of the land over \$5,000.—*Bullett v. Worthington*, 3 Md. Ch. 99. (Affirmed in *Worthington v. Bullitt*, 6 Md. 172.)

(g) The services of a son, rendered during minority to his father, cannot be set up as part of a valuable consideration of a deed from the latter to the former, which is attacked by the creditors of the father as being fraudulent as to them.—*Bullett v. Worthington*, 3 Md. Ch. 99. (Affirmed in *Worthington v. Bullitt*, 6 Md. 172.)

(h) Conveyances were vacated upon proof that they embraced all the grantor's property, real and personal, and were made to his daughter, who never did and never could have paid the considerations expressed in them; that at the time of executing them the grantor was greatly in debt, and shortly afterwards applied for the benefit of the insolvent laws, returning no property in her schedule; and that the whole transaction was a scheme to defraud creditors.—*Richards v. Swan*, 7 Gill 366. [Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors.]

(i) A voluntary conveyance of parent to child in consideration of love and affection is not per se fraudulent and void as to existing creditors.—*Worthington v. Shipley*, 5 Gill 449.

## § 97. Family settlements.

*Cross-Reference.*

See ante, § 96.

## § 98. Failure of consideration.

## § 99. Partial insufficiency or failure.

*Cross-Reference.*

Property in excess of debt, see ante, § 87.

(a) Where part of the consideration for a conveyance is invalid, the conveyance will be void to that extent.—*Williams v. Savage Mfg. Co.*, 3 Md. Ch. 418; *Hinkle v. Wilson*, 53 Md. 287; *Cone v. Cross*, 72 Md. 102, 19 Atl. 391; *Hull v. William Deering & Co.*, 80 Md. 424, 31 Atl. 416.

## § 100. Partial invalidity or illegality.

### Cross-References.

- Future support, see ante, § 80.
- Transactions fraudulent in part, see ante, §§ 18-21.
- Fraud in assignment or trust for creditors, see "Assignments for Benefit of Creditors," § 157.

## (F) CONFIDENTIAL RELATIONS OF PARTIES.

### Cross-References.

- Badges of fraud in general, see ante, § 15.
- Burden of proving consideration, see post, § 277.
- Burden of proving validity of transactions between relatives, see post, § 278.
- Consideration for conveyance, see ante, §§ 93-99.
- Effect of failure to record conveyance; see post, § 154.
- Effect of good faith of grantee, see post, § 170.
- Elements of fraud in general, see ante, §§ 8-11.
- Emancipation of child as transaction in fraud of creditors, see ante, § 43.
- Grantee's knowledge or notice implied from relation between parties, see post, § 157.
- Indebtedness, insolvency and intent of grantor, see ante, §§ 54-69.
- Instructions, see post, § 309.
- Insurance for benefit of family, see ante, § 39.
- Possession of property transferred, see post, § 146.
- Preferences, see post, §§ 118, 119.
- Presumptions and burden of proof, see post, § 278.
- Property and right transferred, see ante, §§ 43-52.
- Questions for jury, see post, § 308.
- Secret reservation or trusts, see post, § 113.
- Sufficiency of evidence of consideration, see post, § 300.
- Sufficiency of evidence to impeach transaction, see post, § 299.
- Sufficiency of evidence to show grantee's participation in fraudulent intent, see post, § 301.
- Sufficiency of evidence to show intent of grantor, see post, § 298.
- Transfer of wife's property by debtor, see ante, § 43.
- Validity of transaction as between parties, see post, §§ 172-175.
- Verdict or findings, see post, § 310.

## § 101. Element or evidence of fraud.

## § 102. Family relation in general.

### Cross-References.

- Burden of proving validity of transaction, see post, § 278.
- Grantee's knowledge or notice implied from relation, see post, § 157.
- Natural affection as consideration, see ante, § 93.

Possession of property transferred, see post, § 146.

Preference as creditors, see post, § 118.

Sufficiency of evidence as to intent of grantor, see post, § 298.

Sufficiency of evidence as to participation in fraudulent intent, see post, § 301.

Sufficiency of evidence to impeach transaction, see post, § 299.

## §§ 103-106. Husband and wife.

### Cross-References.

- Badges of fraud in general, see ante, § 15.
- Burden of proving consideration, see post, § 277.
- Burden of proving validity of transactions, see post, § 278.
- Conducting business in wife's name, see ante, § 40.
- Consideration, see ante, §§ 95, 99.
- Conveyances in trust for grantor, see post, § 111.
- Failure to record or file instrument, see post, § 154.
- Indebtedness, insolvency, and intent of grantor as elements of fraud, see ante, §§ 54-69.
- Insurance on wife's property, see ante, § 39.
- Knowledge of grantee implied from relation, see post, § 157.
- Marriage settlements as consideration, see ante, § 94.
- Payment of premiums for insurance, see ante, § 39.
- Possession by husband or wife of property transferred, see post, § 146.
- Preferences, see post, § 118.
- Questions for jury, see post, § 308.
- Secret reservations of trust, see post, § 113.
- Sufficiency of evidence as to grantee's participation in fraudulent intent, see post, § 301.
- Sufficiency of evidence as to intent of grantor, see post, § 298.
- Sufficiency of evidence to impeach transaction, see post, § 299.
- Transactions fraudulent in part, see ante, §§ 20, 21.
- Validity as between parties, see post, § 172.
- Time of delivery of deed, see "Deeds," § 208.

(a) Under Code, art. 45, § 1, making invalid a conveyance by a husband to his wife to the prejudice of subsisting creditors, a conveyance by an insolvent husband to his wife made without consideration is void ab initio.—*Wilson v. Shaw*, 121 Md. 57, 87 Atl. 1107.

(b) A conveyance by a husband to the wife in prejudice of the husband's subsisting creditors is invalid.—*Ressmeyer v. Norwood*, 117 Md. 320, 83 Atl. 347.

(c) To sustain a conveyance by an insol-

vent husband to his wife of his business, which he subsequently carries on ostensibly in his own name, the wife, as against creditors of the husband, must show that the transaction was fair and honest.—*Manning v. Carruthers*, 83 Md. 1, 34 Atl. 254. [Cited and annotated in 56 L. R. A. 825, on burden of proof of husband's debt to wife for property received from her.]

### § 107. Parent and child.

#### Cross-References.

Badges of fraud in general, see ante, § 15.  
Burden of proving consideration, see post, § 277.  
Burden of proving validity of transaction, see post, § 278.  
Consideration, see ante, §§ 96, 97, 99.  
Emancipation of child as transaction in fraud of creditors, see ante, § 43.  
Indebtedness, insolvency, and intent of grantor, see ante, §§ 54-72.  
Knowledge and intent of grantee, see post, §§ 155-171.  
Parol gift of land, see post, § 138.  
Payment of debt, see ante, § 28.  
Payment of premiums for life insurance, see ante, § 39.  
Possession of or apparent title to property, see post, § 146.  
Preferences, see post, § 118.  
Sufficiency of evidence to impeach transaction, see post, § 299.

(a) A debtor in embarrassed circumstances conveyed his home property to his son and son-in-law, who resided with him. The grantees were poor, and had no way of accumulating large sums of money. After the conveyance the debtor continued in possession, claiming the property as his own, selling timber off it, renting parcels of it, and giving receipts for the rent as due to himself. He once drove the son from the property. Both grantees admitted after the date of the deed that they had no right to the property, and there was no clear proof that either of them ever paid any consideration for the deed. *Held*, that the deed was fraudulent as to the grantor's creditors.—*Duvall v. Waters*, 1 Bland 569, 18 Am. Dec. 350.

### § 108. Fiduciary and friendly relations.

#### Cross-References.

Preference as creditor, see post, § 119.  
Preference of attorney as creditor, see post, § 126.  
Presumptions and burden of proof, see post, § 278.

### (G) RESERVATIONS AND TRUSTS FOR GRANTOR.

#### Cross-References.

Admissibility of evidence, see post, § 286.

Enforcement of trust, see post, § 176.

Instructions, see post, § 309.

Liability of grantee as trustee for creditors, see post, § 182.

Nature of property, see ante, § 45.

Presumptions and burden of proof, see post, § 279.

Questions for jury, see post, § 308.

Retention of possession or apparent title by grantor, see post, §§ 131-154.

Sufficiency of evidence to impeach transaction, see post, § 299.

Reservations affecting validity of chattel mortgage, see "Chattel Mortgages," §§ 188-190.

Reservations in deed of trust or assignment for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 85-101.

Right of creditor to question validity of trusts in general, see "Trusts," § 55.

### § 109. Element or evidence of fraud.

### § 110. Benefits reserved to grantor.

#### Cross-Reference.

Nature of property, see ante, § 45.

#### Annotation.

Reservation of surplus upon assignment of chose in action as security, as a fraud upon other creditors.—36 L. R. A. (N. S.) 370, note.

(a) The members of a firm, in failing circumstances and unable to pay their debts, conveyed all their property to the grantees, in trust to sell and dispose of the same, and to apply the proceeds thereof, after deducting the expenses incident to the trust, to the full satisfaction and payment of the claims of certain enumerated creditors of the grantors, and in the next place to pay and appropriate the residue to and among such of the creditors as should within 90 days signify their assent to the terms of the deed, and execute and deliver to the grantors a full and final release and discharge of and from all claims and demands to the time of executing the deed, and after the full satisfaction and discharge of all the foregoing claims, and all interest thereon, out of the residue, if any, to pay all the other creditors, with a provision that, if there should be any surplus, it should be paid to the grantors. *Held*, that the deed was valid.—*McCall v. Hinkley*, 4 Gill 128. [Cited and annotated in 50 L. R. A. (N. S.) 718, 732, on assignment for creditors: provision for release.]

### § 111. Conveyances in trust for grantor.

#### Cross-Reference.

Enforcement of trust, see post, § 176.

(a) A grantor conveyed property to D. for an express consideration of \$850 for the purpose of preventing the satisfaction of a judgment which might be recovered in an action for injuries then pending against him. No consideration was in fact paid, and D. accepted the same with knowledge, participated in the purpose of the conveyance, and admitted that he held the property in trust for the grantor. Thereafter the grantor became indebted to D. in a sum of \$400, and two months before the grantor made an assignment for creditors, under which less than 1 per cent. was paid, he executed new deeds to the property through another to D. for the purpose of correcting a supposed defect in the title, which deeds expressed a consideration of \$5, but for which D. surrendered a note for the \$400 indebtedness and paid the grantor \$450 in cash. *Held*, that both such conveyances were fraudulent and void as against the grantor's creditors.—*Spuck v. Logan*, 97 Md. 152, 54 Atl. 989, 99 Am. St. Rep. 427.

(b) Property conveyed without consideration was the next day reconveyed by a deed which provided that it should be held in trust for the grantee, who was to retain possession and receive the income thereof during his life, and after his death hold the same, unless disposed of as authorized in the instrument, for his daughters. The deed also gave the grantee full power to lease, sell, mortgage, or devise the property, and without obligation of the purchasers or mortgagees to see to the application of the purchase money. *Held*, that the fraudulent intent of the grantee appeared on the face of the instrument, and the deeds would be set aside at the suit of subsequent creditors.—*Scott v. Keane*, 87 Md. 709, 40 Atl. 1070, 42 L. R. A. 359. [Cited and annotated in 12 L. R. A. (N. S.) 369, on right, as against subsequent creditors, to create trust in settlor's favor for life, and thereafter to heirs or devisees.]

(c) The trusts created by deed were—First, for the use of the grantor and his wife during their joint lives, and the life of the survivor, with power to them to dispose absolutely of the property during their joint lives; second, in case the grantor should survive his wife, in trust to permit him to dis-

pose of the property at his pleasure; and, third, whether the grantor survives his wife or not, in trust for such person or persons as he may appoint by will, and, in case of his failure to make such appointment, then in trust for his heirs at law. *Held*, that the deed was void as against both the prior and subsequent creditors of the grantor.—*Brinton v. Hook*, 3 Md. Ch. 477. [Cited and annotated in 12 L. R. A. (N. S.) 369, on right, as against subsequent creditors, to create trust in settlor's favor for life, and thereafter to heirs or devisees.]

### § 112. Reservation of power to revoke.

#### Cross-References.

Failure to record or file instrument, see post, § 154.

Questions for jury, see post, § 308.

Sufficiency of evidence to show secret reservations or trusts, see post, § 299.

### § 113. Secret reservations or trusts.

(a) Upon a bill to subject a farm, the title to which was in A., to B.'s debt, it appeared that B. had caused an estate owned by him to be put in the name of another and afterwards had dealt with it as its owner, that this estate had been exchanged for another, and that when the conveyances were made this latter estate was put into A.'s name and subsequently exchanged for the farm, which was taken possession of and occupied by B.'s son. *Held*, that these facts justified the relief claimed by the plaintiff.—*Second Nat. Bank v. Yeatman*, 53 Md. 443.

(b) Any secret reservation in trust for the debtor, not apparent on the face of the conveyance, but resting wholly in parol, renders the entire transaction void as against creditors injured thereby.—*Franklin v. Clafin*, 49 Md. 24.

(c) An understanding that the grantor might redeem the property when his circumstances improved will not vitiate a conveyance in other respects unobjectionable; the only effect of such a reservation being to convert an absolute conveyance into a mortgage, or to make an unconditional a conditional sale.—*Glenn v. Randall*, 2 Md. Ch. 220.

(d) The Court of Chancery does not favor secret trusts, and will not permit them to be set up to defeat the rights of creditors.—*Brooks v. Dent*, 1 Md. Ch. 523. [Cited and annotated in 6 L. R. A. (N. S.) 383, on trust

by husband's investing wife's separate property in realty in own name.]

(e) A purely voluntary conveyance, in secret trust for the grantor's wife and children, is fraudulent and void as to creditors to whom the grantor was considerably indebted at the time of the conveyance. In order to set it aside, it is not necessary to show that the grantor was insolvent at the time of its execution.—*Jones v. Slubey*, 5 H. & J. 372.

#### (H) PREFERENCES TO CREDITORS.

##### *Cross-References.*

Consideration for transfer, see ante, §§ 73-100.

Effect of good faith of creditor, see post, § 171.

Fraud as to one of several preferred creditors, see ante, § 20.

Instructions, see post, § 309.

Knowledge and intent of grantee, see post, §§ 155-171.

Presumptions and burden of proof, see post, § 280.

Questions for jury, see post, § 308.

Sufficiency of evidence to impeach preference, see post, § 299.

Verdict and findings, see post, § 310.

As constituting constructive assignment, see "Assignments for Benefit of Creditors," §§ 11-17.

By assignor for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 104-139, 338.

By bankrupt, see "Bankruptcy," §§ 58, 59, 76, 159, 170, 184, 191, 311, 407.

By corporations to creditors in general when insolvent or in contemplation of insolvency, see "Corporations," § 544.

By corporations to officers or stockholders when insolvent or in contemplation of insolvency, see "Corporations," § 545.

By debtor in violation of insolvency laws, see "Insolvency," § 61.

Ground for attachment, see "Attachment," § 44.

In compositions with creditors, see "Compositions with Creditors," § 13.

#### § 114. Element or evidence of fraud.

(a) The fact that a conveyance was made for the purpose of preferring certain creditors of the grantor does not of itself make such conveyance fraudulent as to his other creditors.—*Rich v. Levy*, 16 Md. 74. [Cited and annotated in 23 L. R. A. (N. S.) 19, on conditions precedent to equitable remedies of creditors.]

#### § 115. Right of debtor to prefer creditor.

(a) A debtor in failing circumstances, or insolvent, may bona fide prefer one creditor to another.—*Commonwealth Bank v. Kearns*,

100 Md. 202, 59 Atl. 1010; *Thompson v. Williams*, 100 Md. 195, 60 Atl. 26; *Hickley v. Farmers & Merchants Bank*, 5 G. & J. 377; *State v. Bank of Maryland*, 6 G. & J. 205, 26 Am. Dec. 561. [Cited and annotated in 22 L. R. A. 802, 803, on preferences by insolvent corporations; in 29 L. R. A. 243, 249, on priority of state or United States in payment; in 1 L. R. A. (N. S.) 255, on preference of claims of state over other creditors; in 5 L. R. A. (N. S.) 890, on preference of public funds deposited in bank becoming insolvent.] *Wheeler v. Stone*, 4 Gill 38; *Malcom v. Hall*, 1 Md. Ch. 172; *Stewart v. Union Bank*, 2 Md. Ch. 58; *Powles v. Dilley*, 2 Md. Ch. 119. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.] *Anderson v. Tydings*, 3 Md. Ch. 167. [Cited and annotated in 36 L. R. A. 342, on creditor's right to buy property from debtor to satisfy debt; in 56 L. R. A. 842, on burden of proof of husband's debt to wife for property received from her.] *Glenn v. Grover*, 3 Md. 312. [Cited and annotated in 20 L. R. A. 111, on parol evidence as to consideration of deed; in 36 L. R. A. 359, on creditor's right to buy property from debtor to satisfy debt; in 41 L. R. A. (N. S.) 20, on admissibility of vendor's declarations out of court, as to purpose in making transfer attacked as fraudulent.]

(b) An assignment by an insolvent of his interest as legatee, the proceeds to be paid to satisfy certain debts, balance to be paid as directed by the assignor, is not fraudulent as against creditors.—*Stockbridge v. Franklin Bank*, 86 Md. 189, 37 Atl. 645.

(c) A debtor may prefer one creditor to another, provided the instrument designed to effect the object contains the requisite provision.—*Anderson v. Tydings*, 8 Md. 427, 63 Am. Dec. 708. [Cited and annotated in 28 L. R. A. (N. S.) 910, on relief from mistake of law as to effect of instrument.]

#### § 116. Statutory provisions.

##### *Cross-Reference.*

Statutory provisions for protection of creditors in general, see ante, §§ 3-6.

#### § 117. Intent to defeat other creditors.

##### *Cross-References.*

Creditor's knowledge and intent, see post, §§ 155-171.

Intent of grantor as element of fraud in general, see ante, § 9.

Question for jury, see post, § 308.

#### § 118. Preference of husband, wife, or other relatives.

##### *Cross-References.*

Consideration, see ante, § 95.



Insurance for wife's benefit, see ante, § 39.  
Presumptions and burden of proof, see post, § 280.

Validity of transactions as affected by relationship, see ante, §§ 102, 104-106.

(a) Independent of statutory regulations, such as bankruptcy or insolvency proceedings, near relatives may prefer one another in the payment of debts, where the preferences is made bona fide, without fraudulent intent, and upon a proper consideration.—*Commonwealth Bank v. Kearns*, 100 Md. 202, 59 Atl. 1010.

(b) A conveyance by a husband for the benefit of his wife, in payment of his notes given to her long before for money borrowed from her, is valid as against other creditors, notwithstanding Code 1860, art. 45, provides that no transfer from a husband to his wife "in prejudice of the rights of his subsisting creditors" shall be valid.—*Crane v. Barkdoll*, 59 Md. 534. (See Code 1911, art. 45, § 1.) [Cited and annotated in 36 L. R. A. 342, on creditor's right to buy property from debtor to satisfy debt.]

(c) A deed was executed to a married woman, for a moneyed consideration, paid by the husband to the grantor. The creditors of the husband brought a bill to vacate the deed, as being fraudulent as against them. *Held*, that it was competent, in order to rebut the charge of fraud, to show that the motive which induced the husband to direct the deed to be executed to his wife was to satisfy the claims of one of his creditors; and, that being shown, the deed was held valid at common law and under St. Eliz. c. 5.—*Anderson v. Tydings*, 3 Md. Ch. 167. (See Alex. Brit. Stat. [Coe's ed.] 499.) [Cited and annotated in 36 L. R. A. 342, on creditor's right to buy property from debtor to satisfy debt; in 56 L. R. A. 842, on burden of proof of husband's debt to wife for property received from her.]

### § 119. Confidential relations of parties.

*Cross-Reference.*

As element or evidence of fraud, see ante, §§ 101-108.

### § 120. Nature and form of transaction in general.

*Cross-References.*

Insurance for wife's benefit, see ante, § 39.  
Nature and form of transaction as affecting its validity, see ante, §§ 23-41.

(a) A conveyance by an insolvent is not fraudulent as being for an antecedent debt, and therefore a preference, merely because the conveyance was not made till subsequent to the payment of the consideration, or because the vendor had, without the vendee's knowledge, already hypothecated one of the bonds which the vendee told him to take in payment, and which had been intrusted to the vendor for safe-keeping.—*Nicholson v. Schmucker*, 81 Md. 459, 32 Atl. 182.

### § 121. Payment or satisfaction of debts.

*Cross-References.*

See post, § 123.

Consideration, see ante, § 87.

Nature and form of transaction as affecting its validity, see ante, § 28.

(a) A debtor may convey property to certain creditors in payment of debts if the conveyance is made for a proper consideration, and not with an intent to delay, hinder, or defraud other creditors.—*Commonwealth Bank v. Kearns*, 100 Md. 202, 59 Atl. 1010.

### § 122. Mortgages and other transfers as security.

*Cross-References.*

Nature and form of transaction as affecting its validity, see ante, § 27.

Mortgages operating as assignments for benefit of creditors, see "Assignments for Benefit of Creditors," § 14.

Prior mortgages constituting illegal preferences by assignor for benefit of creditors, see "Assignments for Benefit of Creditors," § 338.

### § 123. Confession of judgment.

*Cross-References.*

Consideration, see ante, § 88.

Effect of secrecy or haste, see ante, § 115.

Nature and form of transaction as affecting its validity, see ante, §§ 29, 30.

Preference of relatives, see ante, § 118.

Judgment confessed as illegal preference by assignor for benefit of creditors, see "Assignments for Benefit of Creditors," § 338.

Procuring or suffering judgment as constituting preference by bankrupt, see "Bankruptcy," § 162.

(a) A debtor may give his creditor a judgment, though it is for the purpose of enabling such creditor to obtain a preference over other creditors.—*Citizens Fire, Marine & Life Ins. Co. v. Wallis*, 23 Md. 173. [Cited and annotated in 50 L. R. A. (N. S.) 739, on assignment for creditors: provision for release.]

(b) A judgment confessed by the members of a firm in favor of H. for the benefit of other parties, creditors of the firm, is not, if made in good faith, an unlawful preference.—*Citizens Fire, Marine & Life Ins. Co. v. Wallis*, 23 Md. 173. [Cited and annotated, see *supra*.]

(c) Fraud cannot be inferred from the fact that one judgment has been confessed to a single party, to secure separate claims of different creditors, where the object evidently was to place them all upon an equal footing.—*Harris v. Alcock*, 10 G. & J. 226, 32 Am. Dec. 158; *Chapman v. Same*, Id. [Cited and annotated in 44 L. R. A. (N. S.) 23, on title obtained by purchaser knowing inability to pay; in 51 L. R. A. (N. S.) 1208, on creation of trust in personalty by parol; in 17 L. R. A. 611, as to whether a judgment is a contract.]

§§ 124-127. (See Analysis.)

§ 128. Preference of sureties.

*Cross-References.*

Consideration for transfer to surety, see ante, § 83.

Conveyances to sureties as constituting constructive assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 13.

§ 129. Preference of invalid debt.

*Cross-Reference.*

Effect of partial illegality of consideration for transfer, see ante, § 100.

§ 130. Effect of illegal preference.

*Cross-References.*

Effect of good faith of grantee, see post, §§ 165-171.

Priorities of creditors attacking transaction, see post, § 321.

Time to sue and limitations, see post, § 248.

Right to subrogation, see "Subrogation," § 14.

(I) RETENTION OF POSSESSION OR APPARENT TITLE BY GRANTOR.

*Cross-References.*

Admissibility of evidence, see post, § 286.  
Assessment in grantor's name as badge of fraud, see ante, § 15.

Instructions, see post, § 309.

Loaning and hiring of chattels, effect of possession, see ante, § 36.

Presumptions and burden of proof, see post, § 281.

Questions for jury, see post, § 308.

Rebuttal of presumptions, see post, § 271.

Reservations and trusts for grantor, see ante, §§ 109-113.

Sufficiency of evidence as to change of possession, see post, § 299.

Necessity of change of possession on assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 45.

Operation and effect of contract of conditional sale as to purchasers or creditors of buyer, see "Sales," §§ 472-474.

Registration of transfer of corporate stock, see "Corporations," §§ 128-136.

Retention of possession by assignor, effect on validity of assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 159.

Retention of possession by chattel mortgagor, effect as to mortgagor's creditors, see "Chattel Mortgages," §§ 185-191.

Transfers by bankrupt, see "Bankruptcy," § 184.

§ 131. Element or evidence of fraud in general.

*Cross-References.*

Rebuttal of presumption of fraud arising from retention of possession, see post, § 271.

Reservation of life estate, see ante, § 110.

Act changing presumption as impairing vested rights, see "Constitutional Law," § 106.

*Annotation.*

May presumption of fraud flowing from retention of chattel by vendor be overcome.—24 L. R. A. (N. S.) 1131, note.

§ 132.—As to creditors.

*Cross-References.*

See ante, § 56.

Possession as agent or employee, see post, § 145.

Possession as bailee, see post, § 144.

Possession as lessee, see post, § 143.

Secret trust as element of fraud, see ante, § 113.

Transactions between husband and wife, parent and child, or other relatives, see post, § 146.

(a) A description in a bill of sale of the property as "one-half interest in eight horses in" a certain county is insufficient to protect the buyer against the seller's creditors, where the seller keeps possession.—*Fersner v. David Bradley & Co.*, 87 Md. 488, 40 Atl. 58.

(b) The fact that the grantee leased land conveyed by the deed to the grantor upon the terms that the rent should be expended in improving the estate is not evidence of fraud between the parties.—*Glenn v. Grover*, 3 Md. 212. [Cited and annotated in 20 L. R. A. 111, on parol evidence as to consideration of deed; in 36 L. R. A. 359, on creditor's

right to buy property from debtor to satisfy debt; in 41 L. R. A. (N. S.) 20, on admissibility of vendor's declarations out of court, as to purpose in making transfer attacked as fraudulent.]

(c) A bona fide transfer of personal property, unaccompanied by a corresponding change of possession, is not fraudulent per se, and void as to creditors under act 1729, c. 8.—*Hambleton v. Hayward*, 4 H. & J. 443. (See Code, art. 21, § 43.) [Cited and annotated in 24 L. R. A. (N. S.) 1140, as to whether presumption of fraud flowing from retention of chattel by vendor may be overcome.]

(d) A. executed a bill of sale of slaves to B., both being residents of W. county, in the District of Columbia. The bill of sale was duly executed, etc., agreeably to the laws of the District. A. afterwards removed into Maryland, bringing with him the slaves, which had remained in his possession, and over which he had exercised acts of ownership. A., both before and after his bill of sale to B., was indebted to C., who recovered judgment against A. in Maryland. A fi. fa. issued upon this judgment, and the said slaves were taken and sold by the sheriff, against whom B. brought trespass. Held, that B. could recover; there being no proof to impeach the validity of the bill of sale or contaminate the transaction with fraud, and retaining possession by the grantor of the property included in a bill of sale, duly executed, acknowledged, and recorded, being sanctioned by act 1729, c. 8.—*Bruce's Adm'rs v. Smith*, 3 H. & J. 499. (See Code, art. 21, §§ 43-47.) [Cited and annotated in 36 L. R. A. 335, on creditor's right to buy property from debtor to satisfy debt; in 31 L. R. A. 616, 623, on participation in debtor's fraudulent intent invalidating transfer; in 24 L. R. A. (N. S.) 1140, as to whether presumption of fraud flowing from retention of chattel by vendor may be overcome.]

(e) The acknowledgment and recording of a bill of sale according to the statute, where the vendor remains in possession, is not conclusive to show absence of fraud; and fraud may be inferred from other circumstances than the vendor's continuing in possession.—*Garrett v. Hughlett*, 1 H. & J. 3. (See Code, art. 21, §§ 43-47.)

### § 133.—As to subsequent purchasers.

#### Cross-Reference.

Persons entitled to assert invalidity, see post, § 224.

### § 134. Statutory provisions.

#### Cross-References.

Retroactive operation, see ante, § 6.  
Statutory provisions as to loaning or hiring of chattels, see ante, § 36.  
Statutory provisions for protection of creditors in general, see ante, §§ 3-6.  
Statutory provisions as to chattel mortgages, see "Chattel Mortgages," § 186.

### § 135.—Change of possession.

#### Cross-Reference.

See ante, § 132.

### § 136.—Record or filing of written instrument.

#### Cross-References.

Effect of failure to file or record instrument, see post, § 154.  
Substitutes for registration, see post, § 154.

(a) Under Code 1904, art. 21, § 41, providing that no personal property shall pass or title change, unless by bill of sale or mortgage acknowledged and recorded, but that the section shall not extend to any sale or gift accompanied by delivery, the president of a corporation cannot, as president, make a sale and delivery of corporate property to himself as an individual, so as to obviate the necessity of a bill of sale, but he must execute a bill of sale with due statutory formalities, making an affidavit as to the bona fides of the sale.—*Mundy v. Jacques*, 116 Md. 11, 81 Atl. 289. (See Code 1911, art. 21, § 43.)

(b) Act 1729, c. 8, § 5, providing that no conveyance of goods or chattels, the vendor remaining in possession, shall be valid to pass the property unless recorded within 20 days in the records of the county where the vendor resides, does not apply to conveyances made in another state.—*Wilson v. Carson*, 12 Md. 54. (See Code, art. 21, §§ 43, 47.) [Cited and annotated in 23 L. R. A. 35, on transfer of property out of state by bankruptcy or kindred proceedings; in 25 L. R. A. 453, on oral proof of foreign laws.]

### § 137. Nature of property transferred.

#### Cross-References.

Fraudulent character of conveyance as affected by nature of property transferred, see ante, §§ 43-53.  
Possibility of delivery, see post, § 148.

### § 138. Nature and form of transaction in general.

#### *Cross-References.*

Loan or hire of chattels, see ante, § 36.  
 Nature and form of transfer as affecting its validity, see ante, §§ 23-41.  
 Sufficiency of transfer of possession, see post, §§ 147-153.  
 Necessity of change of possession in assignment for creditors, see "Assignments for Benefit of Creditors," § 45.  
 Necessity of change of possession of pledged property as between parties, see "Pledges," §§ 11, 12.

### § 139. Absolute sales and conveyances.

#### *Cross-References.*

See ante, §§ 132, 136.  
 Nature and form of transfer as affecting its validity, see ante, § 26.  
 Sufficiency of transfer of possession, see post, §§ 147-153.

### § 140. Public or judicial sales.

#### *Cross-Reference.*

Purchase at execution sale for benefit of grantor, see ante, § 110.

### § 141. Conditional sales.

(a) Where by the express terms of a contract for the sale of slaves, they were to remain the property of the seller until paid for, the payment of the whole of the stipulated price was a condition precedent to the vesting of title in the vendee, and hence though the seller might permit the slaves to be in the hands of the vendee, yet if the vendee attempted to dispose of the slaves, the seller was not estopped from asserting his claim.—*Corse v. Patterson*, 6 H. & J. 153.

### § 142. Reservation of power of disposition or use.

#### *Cross-References.*

Reservations and trusts for grantor, see ante, §§ 109-113.  
 Reservations affecting validity of chattel mortgages, see "Chattel Mortgages," § 188.

### § 143. Possession as lessee.

#### *Cross-Reference.*

Property in possession of third person in general, see ante, § 132.

### § 144. Possession as bailee.

### § 145. Possession as agent or employee.

#### *Cross-References.*

Property in possession of third person in general, see ante, § 132.  
 Employment of debtor by assignee for benefit of creditors as badge of fraud,

see "Assignments for Benefit of Creditors," §§ 160, 169.

Possession by mortgagor as agent for mortgagee, see "Chattel Mortgages," § 189.

### § 146. Possession by husband, wife, or other relatives.

#### *Cross-References.*

Conducting business in name of wife, see ante, § 40.  
 Confidential relations of parties as element or evidence of fraud, see ante, §§ 101-108.  
 Failure to record or file instrument, see post, § 154.  
 Time of delivery of deed, see "Deeds," § 208.

(a) Where a father, indebted to a daughter who was living in the same house with him, conveyed to the daughter the real estate on which they were residing while he was indebted to others, the mere fact that he continued to reside on the premises after the conveyance, as he had done for years prior thereto, does not show bad faith in the transaction.—*Thompson v. Williams*, 100 Md. 195, 60 Atl. 26.

### §§ 147-153. Sufficiency of transfer of possession.

#### *Cross-References.*

Instructions, see post, § 309.  
 Questions for jury, see post, § 308.  
 Substitutes for change of possession, see ante, § 132.  
 Sufficiency of evidence to show change of possession, see post, § 299.  
 Sufficiency of change of possession of mortgaged chattels, see "Chattel Mortgages," § 191.

### § 154. Failure to record or file instrument.

#### *Cross-References.*

Loan or hire of chattels, see ante, § 36.  
 Purging transaction of fraud, see ante, § 22.  
 Record or filing as substitute for change of possession, see ante, § 132.  
 Statutory provisions as record or filing instrument, see ante, § 136.  
 Validity of payment of debt secured by unrecorded mortgage, see ante, § 28.  
 Effect of failure to record transfer as against trustee in bankruptcy, see "Bankruptcy," § 184.  
 Failure to file or record chattel mortgage, see "Chattel Mortgages," §§ 194-197.  
 Failure to file or record contract of conditional sales, see "Sales," § 465.  
 Failure to record mortgages of lands as affecting rights of creditors, see "Mortgages," §§ 172-176.

(a) An unrecorded conveyance is absolutely void as to creditors, when there was no change of possession.—*Dorsey v. Smithson*, 6 H. & J. 61. [Cited and annotated in 50 L. R. A. (N. S.) 322, on right of personal representative to avoid conveyance by decedent in fraud of creditors.]

#### (J) KNOWLEDGE AND INTENT OF GRANTEE.

##### *Cross-References.*

Effect of transaction to delay, hinder or defraud, see ante, § 11.

Fraud as to one or more grantees, see ante, § 20.

Fraud of grantee in procuring conveyance made in good faith by grantor, see ante, § 72.

Instructions, see post, § 309.

Intent of grantor, see ante, §§ 9, 64-72.

Intent of grantor in giving preferences, see ante, § 117.

Pleading, see post, § 263.

Proof, see post, §§ 282, 292, 301.

Questions for jury, see post, § 308.

Rights and liabilities of parties, see post, §§ 172-188.

Sufficiency and effect of verdict or findings, see post, § 310.

Transactions valid in inception, see ante, § 17.

Affecting administration and distribution of insolvent's estate, see "Assignments for Benefit of Creditors," §§ 143-146, 338; "Bankruptcy," § 166; "Banks and Banking," § 74; "Insolvency," §§ 61, 63.

Notice of pendency of action to set aside conveyance, see "Lis Pendens," § 24.

#### § 155. Elements of fraud in general.

(a) Where an action of replevin is defended on the ground that title is not in plaintiff, but in her husband, a colorable title only having been given plaintiff in fraud of the husband's creditors, plaintiff's knowledge of or consent to the fraud is not essential to the defense.—*Rickards v. Rickards*, 98 Md. 136, 56 Atl. 397, 63 L. R. A. 724, 103 Am. St. Rep. 393.

(b) A sale by an insolvent debtor with intent to defraud his creditors is not void, where the purchaser pays a valuable consideration, unless the purchaser has notice of such insolvency, or fraudulent intent, or has knowledge which would put an ordinarily prudent man upon inquiry.—*Waters v. Riffin*, 19 Md. 536.

#### § 156. Knowledge or actual notice.

(a) Under act 1834, c. 293, applicable to Baltimore city and Baltimore county, providing that a conveyance is vitiated if the grantee has notice at the time of its execu-

tion that the grantor is insolvent, the notice must be actual, and not merely constructive.—*Cole v. Albers*, 1 Gill 412. (See Code, art. 47, § 24.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

#### § 157. Knowledge or notice implied from relation between parties.

##### *Cross-References.*

Attorney's knowledge imputable to client, see "Attorney and Client," § 104.

Notice to agent as affecting principal, see "Principal and Agent," § 177.

(a) The seller's intent to defraud creditors being known to the agent through whom the purchase is made, the sale is void, though the purchaser himself has no knowledge of the fraudulent intent.—*O'Connell v. Kilpatrick*, 64 Md. 122, 21 Atl. 98.

#### § 158. Constructive notice, and facts putting on inquiry.

(a) Circumstances which are sufficient to put a purchaser on inquiry as to whether the sale is part of a scheme to defraud the vendor's creditors will charge him with notice of every fact which such inquiry would give him.—*Smith v. Pattison*, 84 Md. 341, 35 Atl. 963.

(b) A person who, with sufficient knowledge of fraud or of suspicious circumstances, takes a deed from an insolvent debtor, is affected with notice of the fraud, notwithstanding that the grantee is himself a creditor of the debtor.—*Biddinger v. Wiland*, 67 Md. 359, 10 Atl. 202. [Cited and annotated in 31 L. R. A. 633, on participation in debtor's fraudulent intent invalidating transfer; in 32 L. R. A. 40, on participation in vendor's fraud invalidating transfer for good consideration; in 32 L. R. A. 679, on admissions and waivers by fiduciaries in actions.]

#### § 159. Operation and effect of knowledge or notice.

##### *Cross-References.*

Conveyances void irrespective of intent of grantee, see post, § 169.

Effect of good faith of grantee, see post, §§ 165-171.

Indebtedness or insolvency of grantor as element of fraud, see ante, §§ 54-72.

Sales on credit, see ante, § 26.

### § 160. Payment of consideration after notice.

#### Cross-References.

Rights of grantee as bona fide purchaser, see post, § 187.

Notice of pendency of action to set aside conveyance, see "Lis Pendens," § 24.

### §§ 161-163. Participation in fraudulent intent.

#### Cross-References.

Fraud as to one or more grantees, see ante, § 20.

Sufficiency of evidence to show participation, see post, § 301.

#### Annotation.

Participation by purchaser in fraud of vendor which will invalidate transfer for good consideration as against the vendor's creditors.—32 L. R. A. 33, note.

Participation by creditor in fraudulent intent of debtor which will make a transfer to pay or secure his debt invalid as to other creditors.—31 L. R. A. 609, note.

(a) A bill of sale conveying, so far as appeared, all the grantor's property, and which the grantee admitted that he took without consideration in order to prevent a creditor named from getting hold of the grantor's store, was *held* fraudulent as against creditors.—*Dorn v. Bayer*, 16 Md. 144.

### §§ 164-171. Effect of good faith of grantee.

#### Cross-References.

Confidential relations as element or evidence of fraud, see ante, §§ 101-108.

Description of consideration, see ante, § 24.

Effect as charging grantee with notice of fraud, see ante, § 158.

Good faith of grantor, see ante, § 72.

Knowledge or notice implied from relationship, see ante, § 157.

Rights and liabilities of bona fide purchasers from grantees, see post, §§ 196-204.

Rights of grantees as bona fide purchasers, see post, §§ 185-187.

Want or insufficiency as element of fraud, see ante, §§ 73-100.

(a) That the conveyance of property by a debtor left him without anything from which creditors could realize their debts will not affect the title of the grantees, in the absence of a showing that the deed was made with intent to defraud the creditors, which intent was known to the grantees.—*Crooks v. Brydon*, 93 Md. 640, 49 Atl. 921.

(b) The plaintiffs laid an attachment on effects in the hands of a garnishee on the

21st of January, 1860. On the 20th of the same month the defendant had conveyed his interest in a vessel by bill of sale in trust for certain of his creditors, but the trustees did nothing towards the execution of the trust. On the 24th of September, 1859, the defendant had contracted to convey his interest in the vessel to the garnishee for a certain sum, and on the same day made a bill of sale to him of the vessel, under which, however, no title passed, because the bill was not recorded in conformity with the act of Congress. By the terms of sale, the purchase money was not to be paid to the defendant, but applied to pay certain debts due by him, one of which was due to the garnishee himself. The interest of the defendant in the vessel was to be held as collateral security for the payment of this debt, and to indemnify him for the payment of other debts due by the defendant on account of the vessel, which the garnishee assumed to pay, and did pay, out of the purchase money; and, upon the repayment of these sums to the garnishee by the defendant, the interest of the latter in the vessel was to be reconveyed to him by the garnishee. *Held*, that the effort on the part of plaintiffs to show fraud on the part of the defendant because of the bill of sale and the deed of trust, even if sustained, would not avail them, as there was no evidence to show that, if the defendant meditated a fraud upon his creditors, the garnishee had notice of it, without which he could not be affected by it.—*Troxall v. Applegarth*, 24 Md. 163.

(c) Where the grantee has shown good faith, the validity of the conveyance is not affected by the fraudulent intent of the grantor.—*Waters v. Riffin*, 19 Md. 536.

(d) Where the conveyance is voluntary, it is not necessary that the grantee should actually participate with the grantor in his fraudulent purpose, or be privy to it.—*Glenn v. Randall*, 2 Md. Ch. 220.

## II. RIGHTS AND LIABILITIES OF PARTIES AND PURCHASERS.

#### Cross-References.

Criminal responsibility of parties, see post, § 331.

Remedies of creditors, see post, §§ 205-328.

## (A) ORIGINAL PARTIES.

*Cross-References.*

- Right of grantee or purchaser as creditor of debtor, see post, § 322.
- Adverse possession by parties to conveyance, see "Adverse Possession," §§ 63, 84.
- Effect of conveyance on grantor's liability for nuisance, see "Nuisance," § 9.
- Right of fraudulent grantor to homestead in property conveyed, see "Homestead," § 81.
- Right of grantee to contest mechanic's lien, see "Mechanics' Liens," § 256.
- Testamentary disposition by grantor after conveyance, see "Wills," § 6.

## § 172. Validity of transaction as between parties.

*Cross-References.*

- Effect as to property rights, see post, §§ 174-178.
- Effect of judgment or decree declaring conveyance void as to creditors, see post, §§ 313, 315.
- Persons who may attack conveyance, see post, §§ 205-225.
- Right of secured creditor to attack validity of other claims secured by same instrument, see post, § 225.
- Rights and liabilities of purchasers from grantee, see post, §§ 193-204.
- Rights and liabilities of purchasers from grantor, see post, §§ 189-192.
- Right to surplus on setting aside conveyance, see post, § 324.
- Bar of dower by conveyance in fraud of creditors, see "Dower," §§ 28, 44, 53.
- Right of grantor's assignee for benefit of creditors as to property fraudulently conveyed, see "Assignments for Benefit of Creditors," § 176.
- Right of grantor's heirs or devisees to impeach conveyance as fraudulent, see "Descent and Distribution," § 90; "Guardian and Ward," § 118; "Wills," § 747.
- Right of grantor's personal representatives as to property fraudulently conveyed, see "Executors and Administrators," § 57.
- Right of grantor's trustee in bankruptcy as to property fraudulently conveyed, see "Bankruptcy," §§ 142, 185.
- Validity of assignments or trusts for creditors as between parties, see "Assignments for Benefit of Creditors," § 40.

(a) A grantor cannot impeach a deed executed for the purpose of defrauding his creditors.—*Watts v. Vansant*, 99 Md. 577, 58 Atl. 433. [Cited and annotated in 25 L. R. A. (N. S.) 597, 599, on validity of contract with intoxicated person.]

(b) In a bill to have a deed declared void on ground of fraud, plaintiff alleged it to have been made under agreement that it

should operate as a mortgage to secure a debt due defendant. He testified that a deed was selected for the purpose instead of a mortgage, because it would keep off his creditors better; and that the consideration stated therein was made much larger than the actual debt, so as to make it appear a bona fide transaction. Held, that, if plaintiff's version be true, the parties were equally in fault in attempting to hinder or delay creditors, and equity will leave them where they placed themselves.—*Brown v. Reilly*, 72 Md. 489, 20 Atl. 289.

(c) The law will not lend its aid to a party seeking to set aside his own fraudulent conveyance.—*Schuman v. Peddicord*, 50 Md. 560.

(d) A court of equity, governed by the maxim "In pari delicto potior est conditio defendentis," refused to set aside a deed executed by the complainant "for the purpose of compounding a threatened prosecution for embezzlement."—*Gotwalt v. Neal*, 25 Md. 434. [Cited and annotated in 48 L. R. A. 849, on injunction, in favor of party in pari delicto, against enforcing illegal contract.]

(e) If the evidence fails to show that the complainant did, under the fraudulent influence of the defendant, do one thing, supposing it to be another, and at the trial he attempted to set up a secret written agreement contradictory of the deed sought to be set aside for fraud, in opposition to the statute of frauds pleaded by the defendant, equity will afford him no relief.—*Wilson v. Watts*, 9 Md. 356.

(f) A weak-minded person, under his brother's influence, will not be presumed capable of being in pari delicto with the latter in executing a fraudulent deed.—*Long v. Long*, 9 Md. 348.

(g) A deed fraudulent as to creditors, though good against all others, may be impeached by the former, but it cannot be impeached by the parties to the fraud, or by their representatives or heirs at law.—*Cushwa v. Cushwa*, 5 Md. 44.

(h) Where a conveyance is made at the request and by the order of the intestate, for the use and benefit of his wife and children, whatever may be the character of the

conveyance, so far as the rights of the creditors are concerned, it is certainly good against the party who caused it to be made and his representatives.—*Kinnemon v. Miller*, 2 Md. Ch. 407. [Cited and annotated in 50 L. R. A. (N. S.) 322, on right of personal representative to avoid conveyance by decedent in fraud of creditors.]

(i) A transfer of property made to defraud creditors is valid between the parties.—*Stewart v. Iglehart*, 7 G. & J. 132, 28 Am. Dec. 202. [Cited and annotated in 31 L. R. A. 646, on participation in debtor's fraudulent intent invalidating transfer.] *Atkinson v. Phillips*, 1 Md. Ch. 507.

(j) A conveyance of personal property though fraudulent as to creditors because of the want of the change of possession, is valid as between the parties.—*Gough v. Edelen*, 5 Gill 101.

(k) A. and B. fraudulently united to induce the wife of A. to join in a conveyance of her lands to B., to secure them against the creditors of A. and to defraud her. After this, B. mortgaged the lands to C., who knew that the validity of the first deed was doubtful. Held, on a bill filed by C. against A. and B. and the heirs of the wife of A. for the sale of the mortgaged premises to satisfy the mortgage debt, that the bill should be dismissed as to all but A. and B., whose interests should be sold.—*Stewart v. Iglehart*, 7 G. & J. 132, 38 Am. Dec. 202. [Cited and annotated, see supra.]

(l) Neither fraud nor an original intention to execute a mortgage can be inferred, as against a grantee, merely from the grantor's remaining in possession of the granted premises, whatever effect it may have with regard to creditors.—*Watkins v. Stockett's Adm'r*, 6 H. & J. 435. [Cited and annotated in 28 L. R. A. (N. S.) 876, 921, 922, on relief from mistake of law as to effect of instrument.]

### §§ 173-178. Mutual rights and liabilities of parties.

#### Cross-References.

Actions between parties, see post, § 188.  
Effect as to title of judgment or decree declaring conveyance void as to creditors, see post, §§ 313, 315.

Rights of creditors of grantee, see post, § 179.

Rights of purchasers from grantee, see post, §§ 193-204.

Rights to surplus on distribution of proceeds to creditors, see post, § 324.

Property fraudulently conveyed as assets of decedent's estate, see "Executors and Administrators," § 57.

Right of grantor's assignee for benefit of creditors as to property fraudulently conveyed, see "Assignments for Benefit of Creditors," § 176.

Right of grantor's trustee in bankruptcy as to property fraudulently conveyed, see "Bankruptcy," §§ 142, 185.

(a) In 1866, W., while greatly in debt, executed to O. a mortgage on land, reciting that it was to secure payment of \$200, one year after date. The mortgage was duly executed, acknowledged, and recorded, and the transaction appeared on its face to be bona fide. O. died in 1875, the mortgage not having been released. In 1876, W. filed a bill to restrain O.'s executrix from selling the land, on the ground that the mortgage had been paid. W.'s testimony showed a case in which he was a party to a mere colorable transaction made fraudulently to hinder and delay his creditors. Held, that W. was not entitled to relief in equity.—*Snyder v. Snyder*, 51 Md. 77.

(b) A deed of property to a trustee in trust for the grantor's wife and children was conceded to be fraudulent as against the grantor's creditors, and the property was levied on and sold under a judgment recovered against the grantor. The property was purchased by the trustee at the execution sale. Held, that, as the deed was valid as to the trustee despite its invalidity as to creditors, the purchase by the trustee inured to the benefit of the beneficiaries.—*Spindler v. Atkinson*, 3 Md. 409, 56 Am. Dec. 755. [Cited and annotated in 21 L. R. A. 50, on purchaser at judicial sale as bona fide purchaser; in 67 L. R. A. 871, 891, 900, on effect on legal title of conveyance in fraud of creditors.]

(c) A. and B., brothers, not being indebted to each other, and for a nominal consideration, agreed with each other that A. should convey certain personal property to B. B., by another agreement, stipulated to reconvey the property to A., or to him in trust for his wife and children. A. then agreed to confess a judgment to B., who further agreed to sue out execution, levy it upon the whole estate of A., make purchases to the amount of the judgment, and then convey it to A., or



to him in trust for his wife and children. This judgment was confessed, and B. died. It was then revived by his administrators. It appeared in fact, and by the answers to a bill filed by A. to vacate the agreements and judgments and procure a reconveyance of the property to himself, that their object, known to both parties, was to hinder, delay, and defraud the creditors of A. *Held*, that the complainant was not entitled to relief in equity.—*Freeman v. Sedwick*, 6 Gill 28, 46 Am. Dec. 650.

### § 179. Rights and liabilities as to third persons in general.

#### Cross-References.

Effect of judgment or decree declaring conveyance, void as to creditors, see post, § 315.

Good faith of transferee of purchase money notes affecting validity of sale, see ante, § 159.

Subsequent purchasers from grantor, see post, §§ 189-192.

Validity of reconveyance of property fraudulently conveyed, see ante, § 49.

### § 180. Rights and liabilities of grantees as to creditors.

#### Cross-References.

Discovery of property or proceeds, see post, § 303.

Extent of relief, see post, §§ 312-314.

Grantee as necessary party defendant to action to set aside conveyance, see post, § 255.

Impeachment of creditors' claims, see post, § 242.

Laches, see post, § 249.

Necessity of exhausting legal remedy before resort to equity, see post, § 241.

Necessity of judgment by creditor, see post, § 241.

Persons entitled to assert invalidity, see post, §§ 205-225.

Receiver of property and proceeds, see post, § 305.

Restraining interference with property, see post, § 304.

Rights and liabilities of bona fide purchasers from grantee, see post, § 203.

Rights and liabilities of grantee as bona fide purchaser, see post, §§ 186, 187.

Rights and liabilities of purchasers from grantee in general, see post, § 194.

Rights of action and defenses, see post, §§ 237-244.

Setting aside conveyance to the extent of creditors' claims, see post, § 313.

Transfers and transactions invalid as to creditors, see ante, §§ 1-171.

### § 181.—Property and proceeds thereof.

(a) Under Code, art. 45, § 1, making invalid a conveyance by a husband to his wife to the prejudice of subsisting creditors, a conveyance by an insolvent husband to his wife made without consideration is void ab initio, and does not transfer the title, such title remaining in the grantor for the use of his existing creditors.—*Wilson v. Shaw*, 121 Md. 57, 87 Atl. 1107.

### § 182.—Personal liabilities.

#### Cross-References.

Construction and operation of findings, see post, § 310.

Criminal responsibility, see post, §§ 329-331.

Personal judgment, see post, § 314.

(a) In a suit by a grantor's creditors entitled to recover of a grantee the value of property fraudulently conveyed, such grantee, who has paid the claims of any of the grantor's creditors, should be credited with the pro rata share to which such creditors would be entitled if the value of the conveyed property had been distributed ratably among the creditors.—*Chatterton v. Mason*, 86 Md. 236, 37 Atl. 960.

(b) A grantee should be credited for the payment of the claim of one of the grantor's creditors, who had rightfully attached the property, prior to the sale thereof, on a suit by the grantor's other creditors entitled to recover of such grantee for fraudulent acquisition of the property.—*Chatterton v. Mason*, 86 Md. 236, 37 Atl. 960.

(c) A grantee accounting with his grantor's creditors for property fraudulently conveyed is not entitled to credit for money paid the grantor for counsel fees, nor for money paid for the grantor's living expenses.—*Chatterton v. Mason*, 86 Md. 236, 37 Atl. 960.

(d) The holders of property under a fraudulent conveyance are accountable for the rents and profits thereof from the time it was unjustly withheld from creditors.—*Kipp v. Hanna*, 2 Bland 26.

(e) A party coming into possession of an estate by a fraudulent conveyance, and participating in the fraud, must account for the rents and profits from the commencement of

his possession, when the conveyance is set aside.—*Strike's Case*, 1 Bland 57; *Strike v. McDonald*, 2 H. & G. 191.

**§ 183.—Reimbursement of consideration and expenditures.**

*Cross-References.*

Amount of consideration as affecting good faith of grantee, see ante, § 168.

Effect of partial invalidity or illegality of consideration, see ante, § 100.

Rights of purchasers from grantee, see post, §§ 194, 203.

Right, as claim against bankrupt's estate, see "Bankruptcy," § 314.

(a) S., being insolvent, and a large judgment existing against him in a foreign state, which he knew would shortly be enforced against him, conveyed, without consideration, to his brother-in-law in a distant state, property occupied by him and M., and conducted as a hotel. Later the brother-in-law, without consideration, conveyed the property to M. On a creditors' bill to subject the property to the judgment, S. claimed that the consideration for the conveyance to his brother-in-law and back to M. was an agreement on the part of the grantees to hold the property subject to a claim of \$4,000 due his daughter R. Up to the time of the attachment on the foreign judgment S. had kept a bank account in his own name, and M. turned over the earnings of the hotel to him, but thereafter the bank account was kept in M.'s name. There was evidence tending to show that M. was the sole proprietor and had full supervision and management of the hotel for several years, and that she employed S. as her counsel and agent, and always acted about the place as its owner, and that considerable profits were realized which were put into improvements. M. testified that she had originally rented the place of S., paying the taxes, mortgage interest, and water rent, and furnished him with board and lodging free, and all this time conducted a boarding and lodging house, and admitted that she paid no consideration for the building when the same was conveyed by S.'s brother-in-law to her, though there was an express consideration of \$13,000, but set up as a consideration the execution by her of a covenant to assume the mortgage debt and pay S.'s daughter R. \$4,000 at her father's death. *Held*, that, in view of the long-continued and

intimate relation between S. and M., the latter was put on inquiry as to the fraudulent character of S.'s conveyances; but since, during the time of these transactions creditors had asserted no claims on the property, or taken any steps to subject it to the debts of S., M. was entitled to improvements made by her, and protection to the extent that the property had increased in value by reason of her labor expended thereon.—*Williams v. Snebly*, 92 Md. 9, 48 Atl. 43.

(b) A trust deed executed by an insolvent to his wife, in consideration of one dollar and of lands belonging to her separate estate which she had previously conveyed to him, but which are grossly inadequate as a consideration, will be set aside, except to the extent of the value of such separate lands of the wife.—*Hull v. William Deering & Co.*, 80 Md. 424, 31 Atl. 416.

(c) An insolvent debtor conveyed property to his sister under circumstances which clearly indicated his intention to defraud his creditors, but the evidence was not clear that the sister knew of his intention. She was the only witness as to the sale, and she testified that her brother sold the property because he was going to another state. Nothing was said about the price, or terms of payment, till just about the execution of the deed, when they agreed that the property was worth \$4,000. The sister had been living with her brother 40 years, and kept his accounts, he being a blacksmith, and after the death of his wife she looked after the household matters, and for these services he allowed her \$2,000 in part payment of the purchase money, and the balance she paid in cash. *Held*, that the \$2,000 allowed for her services could not be treated as a bona fide payment, but that the deed would be allowed to stand as security for the \$2,000 actually paid, and the balance of the property applied to the payment of the insolvent's debts.—*Cone v. Cross*, 72 Md. 102, 19 Atl. 391.

(d) A party coming into possession of an estate by a fraudulent conveyance, and participating in the fraud, is not entitled to any allowance for improvements or advances for rent, taxes, etc.—*Strike's Case*, 1 Bland 57; *Strike v. McDonald*, 2 H. & G. 191.

### § 184.— Claims and liens acquired by grantee.

#### Cross-References.

Effect of illegal preferences, see ante, § 130.

Rights of purchaser from fraudulent grantee, see post, § 195.

Right to subrogation, see "Subrogation," §§ 14-16, 31.

### §§ 185-187. Rights of grantees as bona fide purchasers.

#### Cross-References.

Bona fide purchasers from grantee, see post, §§ 196-204.

Effect of good faith of grantee on validity of transaction, see ante, §§ 164-171.

Validity of transaction as affected by payment of consideration after notice, see ante, § 160.

(a) Land sold for purposes of partition among heirs was purchased on credit by A., the husband of one of the heirs. He afterwards mortgaged the land, his wife not joining, to secure money borrowed to meet a payment on the land. Subsequently an account was stated of the amount remaining due, and A.'s wife was substituted by order of court, in his stead as purchaser; the amount due her from distributions being credited on the purchase money. Judgments were obtained against A. by creditors on debts contracted after his purchase. *Held*, on their bill to set aside the deed to A.'s wife, that, while the deed should be set aside as an absolute conveyance, it should stand as security for the amount previously credited to her as above stated, subject to the mortgage.—*Hinkle v. Wilson*, 53 Md. 287.

(b) Where a deed is constructively fraudulent, equity will allow it to stand as security to the grantee for the sum really due him.—*Williams v. Savage Mfg. Co.*, 3 Md. Ch. 418.

### § 188. Actions.

#### Cross-References.

Actions for penalties, see post, § 330.

Criminal prosecutions, see post, § 331.

Grounds of action as between original parties, see ante, §§ 172-178.

Action for conspiracy to defraud creditors, see "Conspiracy," § 10.

### (B) PURCHASERS FROM GRANTOR.

#### Cross-References.

Estoppel to assert invalidity of prior conveyance, see post, § 225.

Purchasers from grantee, see post, §§ 193-204.

Right of creditors purchasing at execution sale to assert invalidity of conveyance, see post, § 223.

Right of subsequent purchasers to assert invalidity, see post, § 224.

Rights and liabilities of purchasers from grantee as to purchasers from grantor, see post, §§ 195, 204.

Validity of voluntary conveyances as to subsequent purchasers, see ante, § 75.

### § 189. Subsequent purchasers in general.

(a) The execution of a voluntary deed does not raise a presumption of fraud as against a subsequent purchaser from the grantor of the property voluntarily conveyed, where the purchaser had notice of the voluntary deed.—*Cooke v. Kell*, 13 Md. 469.

(b) Where a sale of real estate is made with actual notice to the purchaser of a prior voluntary settlement, no presumption of fraud arises from such sale against the voluntary conveyance.—*City of Baltimore v. Williams*, 6 Md. 235.

§ 190. (Omitted from the classification used herein.)

### § 191. Mortgagees and pledgees.

### § 192. Bona fide purchasers.

#### Cross-References.

Bona fide purchasers from grantee, see post, §§ 196-204.

Burden of proving want of notice, see post, § 275.

Retention of possession as element of fraud, see ante, § 133.

Validity of voluntary conveyances as against subsequent purchasers, see ante, § 75.

(a) A voluntary bona fide conveyance of land was made to A., executed and recorded prior to a deed of the same land to B., who had actual notice of A.'s deed. *Held*, B. cannot be considered a bona fide purchaser without notice, so as to defeat the claim of A.—*City of Baltimore v. Williams*, 6 Md. 235.

### (C) PURCHASERS FROM GRANTEE IN GENERAL.

#### Cross-References.

Necessary parties to action to set aside conveyance, see post, § 255.

Purchasers from grantor, see ante, §§ 189-192.

Rights and liabilities of bona fide purchasers from grantee, see post, §§ 196-204.

Grantee as party to mechanic's lien foreclosure, see "Mechanics' Liens," § 263.

Liability of purchaser pendente lite, see "Lis Pendens," § 26.

**§ 193. Rights and liabilities as to original parties.**

**§ 194. Rights and liabilities as to creditors of original grantor.**

(a) A husband and wife conveyed lands by deed which showed on its face that they were the property of the husband. The grantee executed a mortgage thereon for the price, and gave notes for the unpaid balance; both mortgage and notes being payable to the wife. Thereafter the husband and wife assigned the mortgage, and the wife, in the presence of her husband, assigned the notes for a valuable consideration. After the recording of the mortgage and the assignment, a judgment creditor of the husband caused an attachment to be issued on the judgment, and the same was laid in the hands of the grantee of the land and the assignee of the notes as garnishees. *Held*, that the making of the mortgage and the notes to the wife was an acquisition of property by her from her husband, which, under Code 1860, art. 45, § 1, was invalid as against the claim of the attaching creditor, so that the assignee took no title as against creditors of the husband.—*Green v. Early*, 39 Md. 223. (See Code 1911, art. 45, § 1.)

**§ 195. Rights and liabilities as to purchasers from original grantor.**

*Cross-Reference.*

See ante, §§ 189, 192.

**(D) BONA FIDE PURCHASERS FROM GRANTEE.**

*Cross-References.*

Bona fide purchasers from grantor, see ante, § 192.

Grantee as bona fide purchaser, see ante, §§ 186, 187.

Parties to action to set aside conveyance, see post, § 255.

Pleas setting up defense, see post, § 266.

Proof, see post, §§ 283, 302.

Purchase by executrix, see "Executors and Administrators," § 172.

Purchasers pendente lite, see "Lis Pendens."

**§§ 196-198. (See Analysis.)**

**§ 199. Notice.**

(a) Where property is conveyed by a husband to his wife in consideration of love and affection, such conveyance, being void as against subsisting creditors, is sufficient to put a bona fide purchaser from the wife on

inquiry, and where he neglects to inquire he will be supposed to know all the facts that such inquiry would have revealed.—*Milholand v. Tiffany*, 64 Md. 455, 2 Atl. 831.

(b) Where grantors derived title by a deed from their father which was in fraud of creditors, and the lands conveyed were afterwards sold under a judgment against the father, and the sheriff's deed was recorded, as well as a lease by the execution purchaser to the father, subsequent grantees from said grantors are not bona fide purchasers without notice of the execution purchaser's title.—*Baxter v. Sewell*, 3 Md. 334. [Cited and annotated in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

**§§ 200-204. (See Analysis.)**

**III. REMEDIES OF CREDITORS AND PURCHASERS.**

*Cross-References.*

Actions for penalties, see post, § 330.

Criminal responsibility, see post, §§ 329-331.

Actions to have conveyances declared constructive assignments, see "Assignments for Benefit of Creditors," § 295.

Actions to set aside assignment for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 341-356.

Ground for arrest, see "Arrest," § 16.

Ground for attachment, see "Attachment," §§ 40-45.

Grounds for appointment of administrator, see "Executors and Administrators," § 3.

Joinder or splitting of causes of action, and consolidation of actions, see "Action," §§ 38, 45, 46, 53, 57.

Remedies of creditors of insolvent corporation as to fraudulent or preferential transfers, see "Corporations," § 547.

Right of assignee for benefit of creditors to avoid fraudulent conveyance by assignor, see "Assignments for Benefit of Creditors," § 228.

Rights and remedies of creditors of assignor for benefit of creditors as to property fraudulently conveyed, see "Assignments for Benefit of Creditors," §§ 290, 404.

Rights and remedies of creditors or trustee of bankrupt, see "Bankruptcy," §§ 168-218, 268, 277-306.

Rights and remedies of creditors attacking chattel mortgages in general, see "Chattel Mortgages," §§ 179-202.

Rights and remedies of creditors of decedent, see "Executors and Administrators," §§ 329, 417, 423.

Rights and remedies of receivers of insolvent, see "Receivers," §§ 68, 167.

Rights and remedies of seller as against mortgagee of purchaser obtaining goods by fraud, see "Chattel Mortgages," § 139.

#### (A) PERSONS ENTITLED TO ASSERT INVALIDITY.

##### *Cross-References.*

Admissibility of evidence of right to sue, see post, § 286.  
 Nature and form of remedy, see post, §§ 237-239.  
 Necessity and sufficiency of allegations of right to sue, see post, § 259.  
 Parties plaintiff, see post, §§ 251-253.  
 Presumptions and burden of proof as to right to sue, see post, § 271.  
 Right of original parties to impeach transaction, see ante, § 172.  
 Right of third persons to impeach transaction in general, see ante, § 179.  
 Sufficiency of evidence of right to sue, see post, § 295.  
 Tax title claimant, see "Taxation," § 796.

#### § 205. Necessity of prejudice.

##### *Cross-References.*

Prejudice as a necessary element of fraud, see ante, § 1.  
 Secured creditors, see post, § 220.  
 Transfers of property without pecuniary value, see ante, § 50.

#### § 206. Pre-existing creditors.

##### *Cross-References.*

Indebtedness of grantor as element of fraud, see ante, § 54.  
 Intent to defraud pre-existing creditors as element of fraud, see ante, §§ 64-67.  
 Nature of claim, see post, §§ 213-218.

(a) One who is a creditor at the time of a fraudulent conveyance, but who receives payment and continues to supply goods to the debtor, taking notes on short time therefor, is a subsequent creditor.—*Diggs v. McCullough*, 69 Md. 592, 16 Atl. 453. [Cited and annotated in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

(b) Prior creditors only, and not subsequent ones, can take advantage of fraud in a conveyance.—*Kipp v. Hanna*, 2 Bland 26.

#### § 207. Subsequent creditors.

##### *Cross-References.*

Burden of proving intent to defraud subsequent creditors, see post, § 274.  
 Intent to defraud pre-existing or subsequent creditors as element of fraud, see ante, §§ 64-70.  
 Review, see post, § 327.  
 Sufficiency of evidence as affected by consideration, see ante, §§ 73-100.

#### § 208.— In general.

(a) Where property is purchased by a debtor and taken in the name of another to avoid creditors, the deed to the grantee for the benefit of the debtor can be set aside by a subsequent creditor.—*Abramson v. Horner*, 115 Md. 232, 80 Atl. 907.

(b) Where at the time S. fraudulently conveyed property for the purpose of preventing the satisfaction of any judgment a servant might recover against him in an action then pending for injuries S. was indebted to plaintiffs for goods sold and delivered, and, though balances due on such indebtedness were paid monthly, the indebtedness for additional purchases each month continually increased until S. became insolvent, such indebtedness was continuous, and plaintiffs were not precluded from attacking such conveyance on the ground that they were subsequent creditors.—*Spuck v. Logan*, 97 Md. 152, 54 Atl. 989, 99 Am. St. Rep. 427.

(c) A subsequent creditor of a person who owns property, but who holds it in the name of a third person, and who has the latter execute a mortgage thereon for certain advances, which is invalid, in failing to state the amount and time of payment of such advances, as required by Code 1888, art. 66, § 2, may maintain a suit to set the mortgage aside.—*Baltimore High Grade Brick Co. v. Amos*, 95 Md. 571, 52 Atl. 582, 53 Atl. 148. (See Code 1911, art. 66, § 2.)

(d) Defendants were married in 1856. The wife was carrying on a separate business, and gave the net profits to her husband, "to make the most of them." The husband bought land, including that in controversy. In 1880 he conveyed this to S. for \$10,000 in bonds, which he included at the time in his assets. He testified that he owned them, but again that he considered them as his wife's. In 1881, S. conveyed to the wife, receiving in payment the same bonds. The premises had remained in the husband's possession. Soon after the husband conveyed other land to S. for \$6,000 of the same bonds. Two years afterwards S. reconveyed to the wife for \$6,400; \$400 in cash, the rest in the wife's notes, signed by herself and husband. The husband had held possession, collected rents, and paid the taxes and interest on a

mortgage. In 1882 the husband sold to his sister, and conveyed to her husband, a dwelling, in consideration of bonds belonging, as he alleged, to his sister, and in his possession, which he held till 1884. He occupied the house, paid no rent, but received his sister and her husband every winter, which "he supposed was equivalent to the rent." He paid the ground rent and taxes. In 1884 he sold to said brother-in-law, a poor man, a valuable wharf property which he used in his business, taking unsecured notes for the whole price and remaining in occupancy. He testified that he paid rent, and as the last payment transferred horses and carts to the brother-in-law, which at once passed to his son, to whom he also sold his entire stock in trade, which he had bought on credit, to be paid for as his son was able. He made other transfers of land to his brother-in-law, his son, and S. He accounted for the loss of assets by losses in speculations through a broker, since deceased, of which there were no entries on his books. He testified that he had also lost borrowed money, but was unable to give the name of any one of those from whom he had borrowed. He became insolvent in 1886. Complainant was his creditor at the time of the first conveyance. He received payment, but continued to supply goods, taking notes at four months for the purchases of the preceding month, and at the time of the assignment was owed a large sum. *Held*, that, though a subsequent creditor, he could attack the first conveyance, which, in connection with the later transaction, was seen to be only the first step of a systematic scheme to defraud creditors.—*Diggs v. McCullough*, 69 Md. 592, 16 Atl. 453. [Cited and annotated, see *supra*, § 206.]

(e) Property of a debtor, alleged to have been transferred in fraud of creditors, cannot be subjected to a debt against him unless it is shown that the debt existed prior to the transfer, or that the transfer was made with the intention of defrauding subsequent creditors.—*Matthai v. Heather*, 57 Md. 483.

(f) Subsequent, as well as existing, creditors, may attack their debtor's conveyance if fraud against them was intended.—*Wil-*

*liams v. Banks*, 11 Md. 198. [Cited and annotated in 47 L. R. A. (N. S.) 321, on fraudulent conveyances by one secondarily liable; in 46 L. R. A. 767, 773, 790, on rights of transferee after maturity of negotiable paper; in 43 L. R. A. (N. S.) 222, on purchase of paper at discount as usury.] *Matthai v. Heather*, 57 Md. 483.

(g) Persons not creditors at the time of a conveyance cannot impeach it for fraud in law.—*Ward v. Hollins*, 14 Md. 158. [Cited and annotated in 21 L. R. A. 53, on purchaser at judicial sale as bona fide purchaser.]

#### § 209.— Effect of fraud as to pre-existing creditors.

(a) Where property was fraudulently conveyed to prevent satisfaction of any judgment that might be recovered against the grantor in an action by a servant for injuries, the fact that the servant had not recovered a judgment did not affect the fraudulent intent of the conveyance, so as to preclude other creditors in fact defrauded thereby from suing to vacate the same.—*Spuck v. Logan*, 97 Md. 152, 54 Atl. 989, 99 Am. St. Rep. 427.

(b) Where S. conveyed property in order to prevent satisfaction of a judgment in a suit against him for injuries, and the grantee, participating in the fraud, did not claim to have an interest in the land, and admitted that he held the same to protect the grantor, such conveyance was void as against both the grantor's prior and subsequent creditors.—*Spuck v. Logan*, 97 Md. 152, 54 Atl. 989, 99 Am. St. Rep. 427.

#### § 210.— Knowledge or notice of fraudulent transaction.

##### Cross-References.

Effect of partial invalidity of consideration for transfer, see *ante*, § 100.

Notice as substitute for change of possession, see *ante*, § 132.

(a) A constructive notice resulting from the recording of mortgages is, at most, only notice of the transaction set forth therein; and, where such transaction was a formal and not a real one, a constructive notice was not sufficient to bar the person having such notice from impeaching the mortgages as tending to hinder, delay, or defraud subsequent purchasers.—*Baltimore High Grade Brick Co. v. Amos*, 95 Md. 571, 52 Atl. 582, 53 Atl. 148.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

(b) Evidence held insufficient to show actual notice to one furnishing building material to owner of land that one other than the supposed owner was in any way interested in the premises.—*Baltimore High Grade Brick Co. v. Amos*, 95 Md. 571, 52 Atl. 582, 53 Atl. 148.

(c) A materialman, selling materials to a lessee to erect buildings on the leased property, with knowledge that a ground rent is reserved to the owner, cannot subject the ground rent to the payment of his claim.—*Baltimore High Grade Brick Co. v. Amos*, 95 Md. 571, 52 Atl. 582, 53 Atl. 148.

(d) A creditor who contracts with notice of a trust deed placing property of his debtor beyond the reach of creditors, and under which the debtor exercises all the rights of ownership, is not estopped to have such deed declared fraudulent and against the policy of the law.—*Scott v. Keane*, 87 Md. 709, 40 Atl. 1070, 42 L. R. A. 359. [Cited and annotated in 12 L. R. A. (N. S.) 369, on right, as against subsequent creditors, to create trust in settlor's favor for life, and thereafter to heirs or devisees.]

(e) Subsequent creditors are not debarred from attacking a deed made in pursuance of a scheme to defraud them merely because it is registered.—*Moore v. Blondheim*, 19 Md. 172; *Diggs v. McCullough*, 69 Md. 592, 16 Atl. 453. [Cited and annotated in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

(f) A deed cannot be attacked for fraud by a creditor who has acquired his claim with notice of the conveyance.—*Roberts v. Gibson*, 6 H. & J. 116; *Williams v. Banks*, 11 Md. 198. [Cited and annotated in 47 L. R. A. (N. S.) 321, on fraudulent conveyances by one secondarily liable; in 43 L. R. A. (N. S.) 222, on purchase of paper at discount as usury.]

### § 211. Assignees.

#### Cross-References.

Grantor's assignee of purchase money secured in deed, see ante, § 172.

Pleading intent to defraud assignee, see post, § 267.

Assignability of right of trustee in bankruptcy to attack fraudulent transfer by bankrupt, see "Bankruptcy," § 268.

Assignee or trustee of debtor, see "Assignments for Benefit of Creditors," §§ 228, 290; "Bankruptcy," §§ 168, 185, 209, 279; "Insolvency," § 80.

Right of personal representative of deceased grantor to impeach conveyance, see "Executors and Administrators," § 57.

(a) Where a bill in equity, to set aside a deed for land as made in fraud of creditors, was filed by the assignee of a judgment rendered against the grantor and assigned to the complainant subsequent to the date of the deed, but based on a claim arising antecedent to the date of the deed, the complainant, as assignee, being entitled to collect from the grantor this demand, existing as an original cause of action antecedent to the deed in question, had the right to pursue any property for the payment of the same, belonging to the grantor liable therefor, unless bona fide transferred to a purchaser for a valuable consideration.—*Schaferman v. O'Brien*, 28 Md. 565, 92 Am. Dec. 708. [Cited and annotated in 32 L. R. A. 36, on participation in vendor's fraud invalidating transfer for good consideration; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely.]

### § 212. Nature of claims of creditors.

#### Cross-References.

General creditors, see post, § 219.

Impeachment of creditors' claim, see post, § 242.

Judgment or lien as prerequisite to suit to set aside transfer, see post, § 241.

### § 213.— In general.

(a) The grantee of a judgment creditor who purchased at the execution sale cannot sue to set aside as fraudulent a deed made by the judgment debtor prior to the sale.—*Helden v. Hellen*, 80 Md. 616, 31 Atl. 506, 45 Am. St. Rep. 371. [Cited and annotated in 12 L. R. A. (N. S.) 61, on effect of legal remedy on equitable jurisdiction to remove cloud.]

(b) The statute of Elizabeth as to fraudulent conveyances embraces as creditors all who have a cause of action.—*Gebhart v. Merfeld*, 51 Md. 322; *Welde v. Scotten*, 59 Md. 72. (See Alex. Brit. Stat. [Coe's ed.] 499.) [Cited and annotated in 30 L. R. A. 114, on injunction against execution sales or other proceedings under final process.]

### § 214.— On contracts.

### § 215.— For torts.

#### Cross-Reference.

Transfer pending action for tort as showing intent, see ante, § 66.

(a) St. 13 Eliz. c. 5, in regard to fraudu-

lent conveyances, extends relief, not only to creditors, but to all others who have cause of action or suit, or any penalty or forfeiture, and embraces actions of slander, trespass, and other torts.—*Gebhart v. Merfeld*, 51 Md. 322. (See Alex. Brit. Stat. ]Coe's ed.] 499.)

§§ 216-218.—(See Analysis.)

### § 219. General creditors.

#### *Cross-References.*

Judgment or lien as prerequisite to suit to avoid conveyance, see post, § 241.

(a) W. procured the seizure, under an attachment which was void for nonconformity to the requirements of the attachment law, of personal property belonging to and in the possession of S., his debtor, but mortgaged to B. In an action by the latter against W. to recover damages for the illegal seizure, held, that, inasmuch as the mortgage was a good and valid conveyance as between the parties thereto, W. could not, merely in the capacity of creditor of S., and without having acquired a lien on the mortgaged property by valid legal process, be allowed to set up fraud in the mortgage either in bar of the action or in mitigation of damages.—*Wanamaker v. Bowes*, 36 Md. 42.

### § 220. Secured creditors.

#### *Cross-References.*

Necessity of exhausting security before resort to equity, see post, § 241.

Necessity of prejudice in general, see ante, § 205.

Right to attack validity of other claims secured by same instrument, see post, §§ 225, 230.

### § 221. Judgment creditors.

### § 222. Attaching creditors and officers.

#### *Cross-References.*

Attachment, garnishment or execution as remedy on ground of nullity of transfer, see post, §§ 228, 230.

Pleading fraud as defense, see post, § 267.

Receiver in supplementary proceedings, see "Execution," § 411.

### § 223. Creditors purchasing at execution sales.

#### *Cross-References.*

Jurisdiction of equity to cancel conveyance as fraudulent, see post, § 237.

Purchaser at execution sale as subsequent bona fide purchaser, see ante, § 192.

Rights of creditors as to proceeds of property, see ante, § 181.

### § 224. Subsequent purchasers and incumbrancers.

#### *Cross-References.*

Burden of proving intent to defraud subsequent purchasers, see post, § 275.

Consideration as element of fraud as against subsequent purchasers, see ante, § 75.

Intent of grantor to defraud subsequent purchasers as element of fraud, see ante, § 71.

Knowledge and intent of original grantee as element of fraud, see ante, § 162.

Retention of possession as element of fraud, see ante, § 133.

Rights and liabilities of subsequent purchasers from grantee, see ante, §§ 193-195.

Rights and liabilities of subsequent purchasers from grantor, see ante, §§ 189-192.

Tax title claimant, see "Taxation," § 796.

### § 225. Estoppel and waiver.

#### *Cross-References.*

Knowledge or notice as estopping subsequent creditors, see ante, § 210.

Laches, see post, § 249.

Original parties, see ante, § 172.

Estoppel to attack chattel mortgage on ground of retention of possession by mortgagor, see "Chattel Mortgages," § 199.

Right of creditors of corporation to attack preferences to stockholders, see "Corporations," § 547.

Right of purchaser at sale of assets of insolvent to avoid mortgage as fraudulent, see "Insolvency," § 82.

### (B) REMEDIES ON GROUND OF NULLITY OF TRANSFER.

#### *Cross-References.*

Adequacy of legal remedy as affecting resort to equity, see post, § 239.

Effect of illegal preferences, see ante, § 130.

Following proceeds of transfer, see ante, § 181.

Grounds of nullity, see ante, §§ 1-171.

Necessity of exhausting legal remedy before resort to equity, see post, § 241.

Pleading fraud as defense, see post, § 267.

Remedy by action at law or suit in equity, see post, § 237.

Rights and liabilities of grantees as to creditors, see ante, §§ 181-187.

Sale, under order of court, of land fraudulently conveyed by decedent, see "Executors and Administrators," § 329.

### § 226. Application of property to claims of creditors in general.

(a) A judgment creditor will be required to elect whether he will rely on his lien at law as against a deed of trust alleged by him to be fraudulent, or claim in equity a share in the proceeds of sale under such



deed.—*Lanahan v. Latrobe*, 7 Md. 268. [Cited and annotated in 24 L. R. A. 370, 378, on necessity for acceptance of assignment or deed of trust for creditors.]

(b) A fraudulent conveyance is utterly null and void as to creditors, and they have the same rights against the property embraced in the conveyance as though it never had been made; and the creditor may pursue his process for satisfaction as though the title were unembarrassed by the fraudulent deed.—*Spindler v. Atkinson*, 3 Md. 409, 56 Am. Dec. 755. [Cited and annotated in 21 L. R. A. 50, on purchaser at judicial sale as bona fide purchaser; in 67 L. R. A. 871, 891, 900, on effect on legal title of conveyance in fraud of creditors.]

### § 227. Necessity of direct action.

### § 228. Levy of attachment.

#### Cross-References.

Adequacy of remedy by attachment as affecting resort to equity, see post, § 239.  
Existence of remedy as affecting right to injunction and receiver, see post, § 304.  
Findings requiring dissolution of attachment, see post, § 310.  
Knowledge of grantee as element of fraud affecting rights of attaching creditors, see ante, § 160.  
Necessity of judgment, see post, § 241.  
Retention of possession as element of fraud affecting right to attach property, see ante, § 139.  
Right of levying officer to assert invalidity, see ante, § 222.  
Right of subsequent creditors to attach property, see ante, § 208.  
Rights of attaching creditors of fraudulent grantee as against creditors of grantor, see ante, § 179.  
Fraudulent conveyance as ground for attachment, see "Attachment," §§ 40-45.  
Priority between attachment of property fraudulently conveyed and assignment for creditors, see "Attachment," § 180.  
Remedy of creditors of corporation transferring assets to new corporation, see "Corporations," § 547.

### § 229. Garnishment.

#### Cross-References.

Adequacy of remedy by garnishment as affecting resort to equity, see post, § 239.  
Liability of bona fide purchasers of grantee, see ante, § 196.  
Liability of fraudulent grantee as garnishee, see ante, § 182.  
Question for jury, see post, § 308.  
Sufficiency of findings, see post, § 310.  
Want of consideration as element of fraud affecting liability as garnishee, see ante, §§ 83, 87, 95.

Jurisdiction of justices of the peace depending on amount or value in controversy, see "Justices of the Peace," § 44.

### § 230. Levy of execution.

#### Cross-References.

Adequacy of remedy by execution as affecting resort to equity, see post, § 239.  
Bill in equity as proper remedy, see post, § 237.  
Insolvency of debtor as element of fraud in transfer of stock in trade, see ante, § 61.  
Jurisdiction of equity to cancel transfer at suit of purchaser at execution sale, see post, § 237.  
Purchaser at execution sale as bona fide purchaser, see ante, § 192.  
Right of purchasers to attack conveyance, see ante, § 223.  
Rights acquired by execution purchaser in proceeds of property, see ante, § 181.  
Effect of bar by limitation, see "Limitation of Actions," § 170.  
Execution on judgment against administrator, see "Executors and Administrators," § 454.  
Right of fraudulent grantee to enjoin execution, see "Execution," § 171.

(a) A fraudulent conveyance does not take the title from the grantor; and, at a subsequent sale under an execution against him, the title passes to the purchaser.—*Spindler v. Atkinson*, 3 Md. 409, 56 Am. Dec. 755. [Cited and annotated, see supra, § 226.]

(b) A deed of property to a trustee in trust for the grantor's wife and children was conceded to be fraudulent as against the grantor's creditors, and the property was afterwards levied on and sold under a judgment recovered against the grantor, and the trustee purchased the property at this sale. Held, that, as the deed was valid against the trustee despite its invalidity as to creditors, the purchase by the trustee therefore inured to the benefit of his cestuis que trustent; and as these occupied the position of fraudulent grantees, who were liable to the defrauded creditors for the property, the property in the trustee's hands was subject to a second execution levied by other creditors of the grantor.—*Spindler v. Atkinson*, 3 Md. 409, 56 Am. Dec. 755. [Cited and annotated, see supra, § 226.]

### § 231. Collateral attack on judgment or other proceeding as fraudulent.

(a) Where a judgment confessed by the members of a firm in favor of H., and entered for the use and benefit of other parties,

creditors of the firm, is attacked for fraud, it is allowable to show by proof, aside from the judgment, that the debts which formed this consideration were due to other parties, and that it was entered for their use and benefit.—*Citizens Fire, Marine & Life Ins. Co. v. Wallis*, 23 Md. 173. [Cited and annotated in 50 L. R. A. (N. S.) 739, on assignment for creditors: provision for release.]

(b) Where land is conveyed in trust for the payment of the grantor's debts, a judgment obtained by a creditor of the grantor may be impeached for fraud by any one having a lien subsequent to such judgment.—*Thomas v. Mason*, 8 Gill 1.

### § 232. Contest of claim to property levied on.

#### Cross-References.

Admissibility of levying officer's defense of fraud under pleadings, see post, § 269.

Pleading fraud as defense, see post, § 267.

Right of levying officer to impeach fraudulent conveyance, see ante, § 222.

§§ 233-235. (See Analysis.)

§ 236. (Omitted from the classification used herein.)

### (C) RIGHT OF ACTION TO SET ASIDE TRANSFER, AND DEFENSES.

#### Cross-References.

Jurisdiction of courts of limited or inferior courts as dependent on amount or value in controversy, see "Courts," § 169.

State laws as rules of decision, see "Courts," § 371.

### § 237. Nature and form of remedy.

#### Cross-References.

In cases of illegal preferences, see ante, § 130.

Necessity of direct action, see ante, § 227.

Election of remedy, see "Election of Remedies."

Form of remedy of trustee in bankruptcy, see "Bankruptcy," §§ 287, 288.

(a) A receiver of a corporation, seeking to recover a balance due on a contract claimed by him to have been fraudulently assigned by the corporation, had no adequate remedy at law, since he must first proceed in equity to vacate the assignment.—*Whitman v. Dorsey*, 110 Md. 421, 72 Atl. 1042; *Same v. United Surety Co.*, Id.

(b) Where slaves are manumitted by their owner when the estate is insufficient to pay his debts, the proper remedy of a creditor to

subject such slaves to the payment of his debt is by bill in equity.—*Allein v. Sharp*, 7 G. & J. 96.

§ 238. (Omitted from the classification used herein.)

### § 239. Existence of other remedy.

#### Cross-References.

As affecting right to injunction, see post, § 304.

As bar to creditors' suit in general, see "Creditors' Suit," §§ 4-6.

### § 240. Grounds of action in general.

#### Cross-References.

Allegations as to right to sue, see post, § 259.

Grounds of invalidity of transaction, see ante, §§ 1-171.

Persons entitled to assert invalidity, see ante, §§ 205-225.

Right to discovery, injunction or receiver, see post, §§ 303-305.

### § 241. Conditions precedent.

#### Cross-References.

Conditions precedent to injunction, see post, § 304.

Necessity and sufficiency of allegations of performance of conditions precedent, see post, §§ 259, 264.

Right of general creditors to assert invalidity, see ante, § 219.

Right of grantee to reimbursement of consideration and expenditures, see ante, § 183.

Conditions precedent affecting limitations, see "Limitation of Actions," § 65.

Conditions precedent to creditors' suits in general, see "Creditors' Suit," §§ 10-17.

Conditions precedent to injunction to prevent fraudulent transfer by debtor, see "Injunction," § 44.

Conditions precedent to suit by trustee in bankruptcy, see "Bankruptcy," § 284.

Conditions precedent to suits to set aside assignments for benefit of creditors, see "Assignments for Benefit of Creditors," § 341.

Necessity of administration, see "Executors and Administrators," § 3.

(a) A bill to set aside a conveyance as fraudulent against creditors may be filed before the creditor has obtained judgment.—*Abramson v. Horner*, 115 Md. 232, 80 Atl. 907; *Flack v. Charron*, 29 Md. 311.

(b) Anterior to legislation altering the law, a creditor in Maryland was required to exhaust his legal remedy before he could institute proceedings in equity. But now such a course of procedure is no longer necessary, and without having merged his claim in a judgment creating a lien, a creditor can file his bill for the purpose of obtaining a decree

to set aside a fraudulent conveyance.—*Christopher v. Christopher*, 64 Md. 583, 3 Atl 296. (See Code, art. 16, § 47.) [Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors; in 24 L. R. A. (N. S.) 415, on parol evidence to show true nature of transaction where recited consideration of deed shown not paid; in 20 L. R. A. 107, on parol evidence as to consideration of deed.]

(c) A deed of manumission of slaves may be set aside, as in prejudice of the rights of creditors only upon proof of the exhaustion of the real and personal estate and its insufficiency for the payment of debts.—*Morsell v. Baden*, 22 Md. 391. [Cited and annotated in 23 L. R. A. (N. S.) 57, on conditions precedent to equitable remedies of creditors.]

(d) Under act 1835, c. 380, § 2, a creditor of a firm may proceed in equity to vacate an assignment by the firm, or some member or members of it, without first obtaining a judgment against the firm for his debt.—*Sanderson v. Stockdale*, 11 Md. 563. (See Code, art. 16, § 47.) [Cited and annotated in 29 L. R. A. 682, on firm assumption of partners' individual debts; in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors.]

(e) The case of a guardian suing in behalf of his wards, who is a surety on the bond given by the former guardian and therefore cannot maintain an action at law on the bond, may constitute an exception to the general rule; in vogue prior to act 1835, c. 380, that a creditor, before suing to set aside his debtor's fraudulent conveyances, must have perfected a lien on the property by judgment or otherwise.—*Swan v. Dent*, 2 Md. Ch. 111. (See Code, art. 16, § 47.)

(f) Prior to act 1835, c. 380, the general rule was that a creditor, before he could in equity pursue property fraudulently conveyed, must first have obtained a judgment with respect to realty, and a judgment and fieri facias where personal property was to be reached; but act 1835, c. 380, § 2, expressly exempts creditors from obligation to obtain judgments before they can proceed in equity to vacate fraudulent conveyances.—*Swan v. Dent*, 2 Md. Ch. 111; *Richards v. Swan*, 7 Gill 366. (See Code, art. 16, § 47.) [Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors.]

(g) Where a court of equity is satisfied, from the facts in the case, that a deceased debtor left no personal estate to be administered, they will not require letters to be taken out or proceedings against an administrator to be shown, to support proceedings against property fraudulently conveyed away by the debtor.—*Birely v. Staley*, 5 G. & J. 432, 25 Am. Dec. 303. [Cited and annotated in 17 L. R. A. 348, on priority as to proceeds of creditors' bills; in 23 L. R. A. (N. S.) 93, on conditions precedent to equitable remedies of creditors.]

## § 242. Defenses.

### Cross-References.

Admissibility of evidence as to right to sue, see post, § 286.

Anticipating defense in pleading, see post, § 263.

Burden of proof, see post, § 271.

Estoppel to assert invalidity of transaction, see ante, § 225.

Laches as defense, see post, § 249.

Sufficiency of evidence of creditor's claim, see post, § 295.

Right of grantee in fraudulent conveyance to plead statutes of limitation against creditor's claim, see "Limitation of Actions," § 173.

## § 243. Pendency of other action or proceeding.

## § 244. Abatement on death of party.

### Cross-References.

Death of one of several defendants, see "Abatement and Revival," § 64.

Revival of action, see "Abatement and Revival," §§ 71, 73, 74.

## (D) JURISDICTION, LIMITATIONS, AND LACHES.

### Cross-References.

Jurisdiction of action to set aside conveyance of decedent, see "Executors and Administrators," § 435.

Jurisdiction of justices of the peace, see "Justices of the Peace," § 44.

Removal from state to federal court, see "Removal of Causes," § 11.

## § 245. Jurisdiction of cause of action.

### Cross-Reference.

Jurisdiction of law and equity, see ante, §§ 237, 239.

## § 246. Jurisdiction of persons and property involved.

### Cross-References.

Ancillary jurisdiction, see "Courts," § 27.

Jurisdiction dependent on place where party is found or on situation of property, see "Courts," §§ 13, 18, 19.

### § 247. Venue.

#### Cross-References.

See "Venue," § 5.

Action against estate of decedent, see "Executors and Administrators," § 436.

### § 248. Time to sue and limitations.

#### Cross-References.

Limitation on levy of execution, see ante, § 230.

Accrual of right of action, see "Limitation of Actions," §§ 49, 60, 99, 100.

Commencement or pendency of action as tolling limitation, see "Limitation of Actions," §§ 105-138.

Concealment of cause of action as affecting limitations, see "Limitation of Actions," § 104.

Conditions precedent as affecting limitations, see "Limitation of Actions," § 65.

Death as suspending running of statute of limitations, see "Limitation of Actions," § 83.

Limitations applicable in general, see "Limitation of Actions," §§ 19, 21, 37, 39.

Nonresidence affecting limitations, see "Limitation of Actions," § 87.

Operation of bar by limitation, see "Limitation of Actions," §§ 17, 166.

Pleading in anticipation of defense, see "Limitation of Actions," §§ 177-179.

Retroactive operation of statute, see "Limitation of Actions," § 6.

Time for filing creditors' bill in general, see "Creditors' Suit," § 23.

(a) Code 1904, art. 45, § 1, provides that no acquisition of property passing to the wife from the husband after coverture shall be valid, if made to her in prejudice of the rights of his subsisting creditors, who must assert their claims within three years after the acquisition of the property by the wife, or be absolutely barred. *Held*, that where a husband, to defraud his creditors, took title to certain real estate in the name of himself and wife as tenants by the entireties, but promptly recorded the deed and took no steps to conceal the same, the creditor's right to attack the transfer was barred after three years, though by its omission to examine the deed or the record it had no knowledge of the fraud until after the husband's death and three years had expired.—*Stieff Co. v. Ulrich*, 110 Md. 629, 73 Atl. 874. (See Code 1911, art. 45, § 1.)

(b) Where a creditors' bill was filed to vacate certain deeds as fraudulent as against such creditors, and the statute of limitations was pleaded to their claims, it was *held* that the question, so far as it in-

volves the existence of such claims, is of a legal nature, or would be cognizable at law; and in such cases courts of equity govern themselves by the same limitations as the statute prescribes to suits in the common-law courts, acting, not upon the ground of analogy, but in obedience to the statute.—*McDowell v. Goldsmith*, 2 Md. Ch. 370. [Cited and annotated in 22 L. R. A. (N. S.) 211, on public records as notice to set statute running against action based on fraud; in 41 L. R. A. (N. S.) 5, 8, on admissibility of vendor's declarations out of court as to purpose in making transfer attacked as fraudulent.]

### § 249. Laches.

#### Cross-References.

See ante, § 110.

Estoppel to assert invalidity, see ante, § 225.

Laches as defense to action by assignee of corporation, see "Corporations," § 550.

(a) Laches in bringing an action to set aside a fraudulent conveyance could not be imputed on account of the staleness of the claim when suit was inaugurated; there being nothing on the face of the bill to indicate how long the indebtedness had been overdue.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 664. [Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors; in 33 L. R. A. (N. S.) 578, on exclusiveness of particular statutory method for revival of action.]

(b) A bill by a substituted trustee in insolvency to cancel alleged fraudulent conveyances made by the debtor to the original trustee prior to the insolvency, comes too late when brought 20 years after the conveyances were made, 13 years after the insolvency proceedings, and 5 years after said trustee's death.—*Preston v. Horwitz*, 85 Md. 164, 36 Atl. 710.

### (E) PARTIES AND PROCESS.

#### Cross-References.

Parties to actions to have conveyances declared constructive assignments, see "Assignments for Benefit of Creditors," § 295.

Parties to actions to set aside conveyances in fraud of wife's right to alimony, see "Divorce," § 276.

Parties to actions to set aside conveyances made by decedent, see "Executors and Administrators," §§ 417, 438.

Parties to creditors' suits in general, see "Creditors' Suits," § 25.

Rights and liabilities of purchasers pendente lite, see "Lis Pendens," §§ 13, 15, 16.

### § 250. Plaintiffs.

#### *Cross-Reference.*

Persons entitled to assert invalidity of transfer, see ante, §§ 205-225.

### § 251.— In general.

(a) On a bill brought against the obligor in a bond, which had been assigned to a third party, to annul deeds of defendant alleged to be fraudulent as to creditors, the assignee is a necessary party complainant.—*Coale v. Mildred's Adm'r*, 3 H. & J. 278.

### § 252.— Suing in behalf of all creditors.

#### *Cross-Reference.*

Effect of judgment setting aside conveyance, see post, § 315.

(a) One or two creditors may proceed in equity to vacate conveyances void by the statute of Elizabeth; and, if successful, the fund is retained in chancery until all the creditors are notified to come in and assert their claims.—*Birely v. Staley*, 5 G. & J. 432, 25 Am. Dec. 303. (See Alex. Brit. Stat. [Coe's ed.] 499.) [Cited and annotated in 17 L. R. A. 348, on priority as to proceeds of creditors' bills; in 23 L. R. A. (N. S.) 93, on conditions precedent to equitable remedies of creditors.]

### § 253.— Joinder.

#### *Cross-Reference.*

Joinder of causes of action, see "Action," §§ 38, 45, 46.

### § 254. Defendants.

#### *Cross-Reference.*

Misjoinder of parties defendant as constituting multifariousness, see "Equity," §§ 147-150.

### § 255.— In general.

#### *Cross-Reference.*

Injunction against persons not parties, see post, § 304.

(a) The heirs of a grantor who conveyed property to his wife in fraud of his creditors are necessary parties to a bill to set aside the conveyance.—*Wilson v. Shaw*, 121 Md. 57, 87 Atl. 1107.

(b) Real estate purchased by a debtor for his own benefit was conveyed to another person, who, in turn, conveyed it to a third person, in whose name the record title stood; a reconveyance to the first grantee being withheld from record. The first grantee, who might have made herself a party to a

proceeding to set aside her conveyance as made in fraud of the real purchaser's creditors, was a witness in the case, and was therefore bound by the decree as effectually as if made a party, and at the time of filing the bill the creditor had no definite knowledge of her claim under the conveyance. *Held*, that she was not a necessary or a proper party defendant to the action.—*Abramson v. Horner*, 115 Md. 232, 80 Atl. 907.

(c) In an action to set aside a fraudulent conveyance, all persons having a present interest in the property should be made parties defendant.—*Whitman v. Dorsey*, 110 Md. 421, 72 Atl. 1042; *Same v. United Surety Co., Id.*

(d) One owing money on a contract, or who has the money in his possession, is a proper party to a bill to set aside a fraudulent assignment of the debt evidenced by the contract.—*Whitman v. Dorsey*, 110 Md. 421, 72 Atl. 1042; *Same v. United Surety Co., Id.*

(e) Code 1904, art. 16, § 176, prescribes procedure by plaintiff, where objection is made as to defect of parties, and provides that if the objection be sustained, plaintiff shall only be allowed "if the court sees fit" to amend by adding parties. A bill to set aside a deed for fraud as to creditors made parties defendant only the immediate parties to the deed, and the answer raised the defense of a defect of parties. On the trial there was introduced in evidence a deed of the land in question, executed prior to the institution of the suit, to one not a party to the suit. *Held*, that the relief asked was properly refused for defect of parties.—*Mishler v. Finch*, 104 Md. 182, 64 Atl. 945. (See Code 1911, art. 16, § 185.)

(f) Defendant and wife deeded certain land to C. in trust for defendant's children, rents and profits to be paid to them until the youngest became of age, and then the premises to be conveyed to them. C. did not execute a bond or enter on his duties as trustee. *Held*, that C.'s heirs and the cestuis que trustent were necessary parties to a bill to set aside the trust deed as executed in fraud of creditors.—*Talbott v. Leatherbury*, 92 Md. 166, 48 Atl. 733.

(g) A person through whom fraudulent

conveyances pass, and who acts merely to promote the scheme for defrauding creditors, has no legal or equitable interest in the property fraudulently conveyed, and is not a necessary party defendant to such proceedings.—*Walter v. Riehl*, 38 Md. 211.

(h) In an action to set aside a fraudulent conveyance, it is not necessary to join persons to whom the land is conveyed pendente lite as defendants.—*Schaferman v. O'Brien*, 28 Md. 565, 92 Am. Dec. 708. [Cited and annotated in 32 L. R. A. 36, on participation in vendor's fraud invalidating transfer for good consideration; in 35 L. R. A. (N. S.) 762, on effect of conveyance of land held adversely.]

(i) The debtor is a necessary party defendant to a bill filed by his creditors to reach land alleged to have been fraudulently conveyed.—*Lovejoy v. Irelan*, 17 Md. 525, 79 Am. Dec. 667.

(j) The grantee is a necessary party to an action by the grantor's creditors to set aside a conveyance as fraudulent.—*Lovejoy v. Irelan*, 17 Md. 525, 79 Am. Dec. 667.

(k) Where a bill is filed to vacate a deed made by an insolvent debtor in fraud of creditors, the trustee in insolvency is a necessary party; and, if there be no trustee living, one must be appointed, before the bill is filed, by a court of law.—*Jamison v. Chesnut*, 8 Md. 34. [Cited and annotated in 10 L. R. A. (N. S.) 307, on right of bankrupt's creditor to set aside transfer in fraud of creditors.]

(l) The trustee of an insolvent debtor is a necessary party to a bill filed by creditors to vacate a fraudulent conveyance made by the insolvent before his application.—*Swan v. Dent*, 2 Md. Ch. 111.

(m) Certain lands were vested in the wife of A. in fee tail. Husband and wife afterwards made an absolute conveyance of the same in fee to B., and he reconveyed to A. by a similar deed, who, more than 12 months afterwards, conveyed to C. by a third similar deed. Held, on a bill filed by creditors to set aside the last conveyance and to subject the property to the husband's debts due prior to such conveyance, that it was not necessary, the wife being dead, to make her surviving children parties.—*Jones v. Slubey*, 5 H. & J. 372.

(n) Where a party bought goods and gave his note and bond, which were indorsed and assigned to the complainant, and the debtor immediately after bought land, which he voluntarily conveyed to his children, and the assignee obtained judgments against the debtor on the note and bond, and the debtor afterwards became insolvent, it was held that the insolvent's trustee was not a necessary party to a bill brought to vacate the conveyance and have the property sold to pay the complainant; and the conveyance was annulled and the land sold.—*Farrow v. Teackle*, 4 H. & J. 271.

(o) Where a creditor becomes such by an assignment to him of the debtor's note and bond, the creditor's assignor is not a necessary party to a suit to set aside the debtor's conveyance as fraudulent.—*Farrow v. Teackle*, 4 H. & J. 271.

#### § 256.—Joinder.

(a) In a creditors' bill to set aside for fraud several separate conveyances of property made by a debtor who, at the time of bringing the bill, is deceased, all the grantees in the several conveyances may properly be joined as defendants.—*Brian v. Thomas*, 63 Md. 476.

(b) In an action by a creditor to subject property fraudulently conveyed to the payment of his claim, different parties, holding under several fraudulent conveyances from the debtor, may be joined in one action as defendants.—*Trego v. Skinner*, 42 Md. 426.

#### § 257. Intervention and change of parties.

##### Cross-References.

Amendment of pleadings, see post, § 268.  
Creditor's intervention to contest judgment against debtor as fraudulent, see ante, § 237.

#### (F) PLEADING.

##### Cross-References.

In action to enforce penalties, see post, § 330.  
Indictment for fraudulently conveying property, see post, § 331.  
Answer as evidence in equity, see "Equity," § 340.  
Conformity of judgment to pleadings, see "Judgment," § 252.  
Cross-bill seeking reformation of instrument attacked, see "Reformation of Instruments," § 37.

In action against estate of deceased insolvent, see "Executors and Administrators," § 417.

In action by assignee for benefit of creditors to set aside fraudulent conveyance by assignor, see "Assignments for Benefit of Creditors," § 277.

In action by trustee in bankruptcy, see "Bankruptcy," § 302.

In actions to have conveyances declared constructive assignments, see "Assignments for Benefit of Creditors," § 295.

In actions to set aside assignments for benefit of creditors, see "Assignments for Benefit of Creditors," § 350.

In actions to set aside conveyances in fraud of wife's right to alimony, see "Divorce," § 276.

In creditors' suits in general, see "Creditors' Suit," §§ 39-42.

Joinder of causes of action, see "Action," § 38.

Pleading in anticipation of defense of bar by limitations, see "Limitation of Actions," §§ 177-179.

### § 258. Bill, complaint, or petition.

#### *Cross-Reference.*

Multifariousness, see "Equity," §§ 148, 150.

### § 259.— Form and requisites in general.

#### *Cross-References.*

Allegations to support appointment of receiver, see post, § 305.

Burden of proof under pleadings, see post, § 271.

Consistency or repugnancy, see "Equity," § 144.

(a) Under act 1835, c. 380 (Code 1888, art. 16, § 46), providing that in proceedings in equity to vacate conveyances that are fraudulent as against creditors it shall not be necessary for plaintiff to allege having obtained a judgment at law on his demand, an allegation in a bill to set aside a fraudulent conveyance that the grantor became indebted to the plaintiff on a certain day in a certain sum, "which indebtedness, with the interest thereon, still remains unpaid and unsatisfied," is sufficient to show an existing indebtedness.—*Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 Atl. 664. (See Code, art. 16, § 47.) [Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors; in 33 L. R. A. (N. S.) 578, on exclusiveness of particular statutory method of revival of action.]

(b) In a bill by a creditor to restrain a debtor from confessing judgment on a bond alleged to have been fraudulently executed without consideration, complainant's claim

must be distinctly stated.—*Mahaney v. Lazier*, 16 Md. 69. [Cited and annotated in 30 L. R. A. 236, on injunction against judgments by confession.]

### § 260.—Indebtedness.

#### *Cross-References.*

See ante, § 259.

Indebtedness as element of fraud in transaction, see ante, §§ 54, 55.

### § 261.—Insolvency.

#### *Cross-Reference.*

Insolvency as element of fraud in transaction, see ante, §§ 55-62.

(a) A bill to set aside a voluntary conveyance as fraudulent need not allege that the grantor had not ample other means to pay all his debts at the date of filing the bill, as well as of executing the conveyance; the date of the impeached conveyance being the particular time when the sufficiency of the debtor's means is to be inquired into.—*Goodman v. Wineland*, 61 Md. 449.

### § 262.—Description of property.

#### *Cross-References.*

Defects cured by verdict, see "Pleading," § 433.

Effect of exhibit annexed to pleading, see "Pleading," § 307.

### § 263.—Fraudulent transaction.

#### *Cross-References.*

Presumptions and burden of proof, see post, §§ 270-284.

Necessity of alleging facts constituting fraud, see "Pleading," § 8.

### § 264.—Want or exhaustion of other remedy.

#### *Cross-References.*

See ante, § 261.

Conditions precedent, see ante, § 241.

Existence of other remedy as affecting resort to equity, see ante, § 239.

### § 265.—Prayer for relief.

#### *Cross-Reference.*

Conformity of judgment to pleadings, see "Judgment," § 252.

### § 266. Plea or answer, and subsequent pleadings.

#### *Cross-Reference.*

Answer as evidence in equity, see "Equity," §§ 340, 345.

(a) A bill to set aside a conveyance alleged that it was made with "intent" to delay, hinder, and defraud creditors. *Held*, that,

as the intent is immaterial, if the conveyance did in fact hinder, delay, or defraud creditors, and the allegation is therefore, in effect, one of fact, and not an inference, it is such a one the truth of which a demurrer thereto admits.—*Riley v. Carter*, 76 Md. 581, 25 Atl. 667, 19 L. R. A. 489, 35 Am. St. Rep. 443. [Cited and annotated in 42 L. R. A. (N. S.) 343, on mortgage given by incompetent who had not been declared such.]

(b) A mother conveyed by deed to her son, for the named consideration of \$400, certain property which she had lately bought for that sum, but which she repaired at an expense of double that sum. A bill was brought by the creditors of the mother to vacate the deed. To avoid the inference of fraud arising from the inequality between the value of the property and the consideration named in the deed, the son set up in his answer an indebtedness from his mother on account of his services as her clerk. The bill alleged that repairs to the amount of \$900 were put upon the property by the mother after the conveyance to her son, but did not seek a discovery as to how he compensated her for the same. The answer denied that the repairs were made subsequent to the deed, and stated that the repairs were paid for by the indebtedness aforesaid. From the testimony it appeared improbable that the son, with his means of raising money, could have saved enough to pay the \$400, and to create a fair indebtedness from his mother for the \$800. There were also other suspicious circumstances in the case. *Held*, that the statement in the answer as to the mother's indebtedness to the son was not responsive to the bill.—*McNeal v. Glenn*, 4 Md. 87.

(c) A bill by creditors to vacate their debtor's conveyance as fraudulent charged that the deeds comprised all the debtor's real and personal estate. The defendant grantee denied this allegation, and averred in his answer that the debtor, after delivery of the deed to him, was seized and possessed of real estate in A. and B. abundantly sufficiently, as he believed, to pay complainants. *Held*, that the averment was insufficient, as it should have been that the real estate retained by the debtor was sufficient to pay all the latter's debts.—*Birely*

*v. Staley*, 5 G. & J. 432, 25 Am. Dec. 303. [Cited and annotated in 17 L. R. A. 348, on priority as to proceeds of creditors' bills; in 23 L. R. A. (N. S.) 93, on conditions precedent to equitable remedies of creditors.]

### § 267. Pleading fraud as defense.

#### Cross-References.

In actions between parties, see ante, § 188. Cross bill attacking liens involved in creditors' suit as fraudulent preferences, see "Creditors' Suit," § 40.

### § 268. Amended and supplemental pleadings.

#### Cross-Reference.

In suit to set aside assignment for creditors, see "Assignment for Benefit of Creditors," § 350.

### § 269. Issues, proof, and variance.

#### Cross-References.

Conformity of findings to pleadings and issues, see post, § 310.

In suit to set aside illegal preferential transfer of notes by national bank, see "Banks and Banking," § 287.

(a) A bill to vacate conveyances alleged to be fraudulent, for the benefit of the grantor's creditors, charged that they comprised all the grantor's real and personal estate. The defendant and grantee denied this allegation, and averred in his answer that the debtor and grantor, after the delivery of the deed to him, was seized and possessed of real estate in A. and B. abundantly sufficient, as he believed, to pay the complainants (two of the creditors). *Held*, that the fact of the grantor's owning other land in A. and B. was a matter put in issue by the defendant.—*Birely v. Staley*, 5 G. & J. 432, 25 Am. Dec. 303. [Cited and annotated, see supra, § 266.]

## (G) EVIDENCE.

#### Cross-References.

Allowance of claims against decedent's estate as evidence of indebtedness, see "Executors and Administrators," § 241. Answer as evidence in equity, see "Equity," §§ 340, 345.

Competency of witnesses, see "Witnesses," §§ 135, 140, 143, 150, 166.

Constitutionality of statutes prescribing rules of evidence, see "Constitutional Law," § 55.

Constitutionality of statutes relating to privilege of witness in proceedings to inquire into validity of transaction, see "Witnesses," § 293.

Effect of partial invalidity of statute, see "Statutes," § 64.



Evidence as to fraud in assignments for benefit of creditors, see "Assignments for Benefit of Creditors," § 161.

Evidence as to homestead, see "Homestead," § 57.

Evidence of grounds of attachment, see "Attachment," § 47.

In actions by assignee or trustee in insolvency, see "Insolvency," § 99.

In actions by trustee in bankruptcy, see "Bankruptcy," § 303.

In actions by vendor against bona fide purchaser of goods obtained by fraud of vendee, see "Sales," § 244.

In actions by vendor against mortgagee of goods obtained by fraud of vendee, see "Chattel Mortgages," § 139.

In actions to set aside conveyances in fraud of wife's right to alimony, see "Divorce," § 276.

In actions to set aside preferences to officers of insolvent corporation, see "Corporations," § 545.

In creditors' suits in general, see "Creditors' Suit," § 44.

## § 270. Presumptions and burden of proof.

### § 271.—In general.

#### Cross-References.

Admissibility of evidence of right to sue, see post, § 286.

Impeachment of creditor's claim as defense, see ante, § 242.

Persons entitled to assert invalidity, see ante, §§ 205-225.

Pleading right to sue, see ante, § 259.

Sufficiency of evidence of right to sue, see post, § 295.

Burden of proving homestead character of land, see "Homestead," § 57.

(a) The fraud which will justify equity to set aside a conveyance as fraudulent against creditors of the grantor must be established by satisfactory proof, and will not be presumed.—*Tyner v. Johnson*, 119 Md. 627, 87 Atl. 266.

(b) St. 13 Eliz. c. 5, provides that conveyances made with the purpose to delay or defraud creditors shall be void. Section 6 declares that the statute shall not apply where the estate shall be on good consideration to one not having at the time knowledge of the fraud or collusion. Suit was brought to set aside a deed as void under the statute, the deed on its face being valid. *Held*, that the burden was on the complainant to show that either the deed was not made on a good consideration, or with a fraudulent intent on the part of the grantors to defraud their creditors, to the knowl-

edge of the grantees.—*Crooks v. Brydon*, 93 Md. 640, 49 Atl. 921. (See Alex. Brit. Stat. [Coe's ed.] 499.)

(c) Where facts appear sufficient to raise a presumption that a conveyance is in fraud of the grantor's creditors, the burden of showing good faith devolves upon the parties thereto.—*Zimmer v. Miller*, 64 Md. 296, 1 Atl. 858. [Cited and annotated in 18 L. R. A. 132, on usury in loans by building associations; in 29 L. R. A. 133, on application on mortgage of payments on loan association stock.]

(d) When a deed is without consideration, the argument that, the fact of the indebtedness or insolvency of the grantor at the time being shown, the burden of proof ought to rest on the grantee, applies with great force.—*Glenn v. Grover*, 3 Md. 212. [Cited and annotated in 20 L. R. A. 111, on parol evidence as to consideration of deed; in 36 L. R. A. 359, on creditors' right to buy property from debtor to satisfy debt; in 41 L. R. A. (N. S.) 20, on admissibility of vendor's declarations out of court, as to purpose in making transfer attacked as fraudulent.]

(e) Indebtment of the father at the time of the execution of a voluntary conveyance from him to his son is prima facie evidence of a fraudulent intent with respect to prior creditors of the father; but the presumption of fraud may be rebutted by showing positively and affirmatively that the father was at the time possessed of ample means to pay his debts over and above the property conveyed, and that the settlement upon the son was reasonable according to his position in life, though, if there be any doubt of the adequacy of the father's means, the conveyance must fall.—*Bullett v. Worthington*, 3 Md. Ch. 99. (See *Worthington v. Bullitt*, 6 Md. 172.)

(f) A creditor who assails a conveyance of his debtor for fraud must show it. It cannot be presumed.—*Allein v. Sharp*, 7 G. & J. 96.

(g) A bill for the benefit of a grantor's creditors, to vacate conveyances alleged to be fraudulent, charged that they comprised all the grantor's real and personal estate. The defendant grantee denied this allegation and averred in his answer that the grantor after the conveyance was still seised and possessed of certain real estate abundantly sufficient, as he believed, to pay the complainants. *Held*, that the allegation

of the debtor's ownership of other property, being an affirmative allegation in the answer, cast the burden of proof upon the grantee.—*Birely v. Staley*, 5 G. & J. 432, 25 Am. Dec. 303. [Cited and annotated in 17 L. R. A. 348, on priority as to proceeds of creditors' bills; in 23 L. R. A. (N. S.) 93, on conditions precedent to equitable remedies of creditors.]

### § 272.—Insolvency.

#### Cross-References.

Admissibility of evidence to show indebtedness or insolvency, see post, §§ 287, 288.

Indebtedness and insolvency as elements of fraud, see ante, §§ 54-62.

Sufficiency of evidence to show insolvency, see post, § 297.

(a) Where one is charged with having conveyed property to his wife, in fraud of creditors, when he had no other property to pay them with, and the charge of inability to pay his creditors was evasively met in the answer, the fact that no attempt to deny such charge was made in the evidence affords strong proof of its truth.—*Downs v. Miller*, 95 Md. 602, 53 Atl. 445.

(b) In an action to set aside a deed as void as against creditors, the burden of proof to show that defendant had other property which creditors could reach rests on defendant.—*Dawson v. Waltemeyer*, 91 Md. 328, 46 Atl. 994.

(c) Indebtedness at the time of the execution of a voluntary conveyance throws upon the grantee the burden of showing that, though indebted, the grantor was amply able to pay his debts.—*Ellinger v. Crowl*, 17 Md. 361. [Cited and annotated in 20 L. R. A. 111, on parol evidence as to consideration of deed.]

(d) In the case of a voluntary conveyance by a party indebted at the time, the existence of the grantor's means for the payment of creditors must be shown by the parties claiming under the deed; and the burden of proof is on them to repel the presumption of fraud arising from the condition of the grantor at the time the conveyance was made.—*Atkinson v. Phillips*, 1 Md. Ch. 507.

### § 273.—Intent of grantor in general.

#### Cross-References.

Admissibility of evidence of intent, see post, § 289.

Intent as element of fraud, see ante, §§ 9, 64-72.

Intent of grantor as affecting burden of proving knowledge and intent of grantee, see post, § 282.

Sufficiency of evidence to show fraudulent intent, see post, § 298.

Intent in giving preference to officers of insolvent corporation, see "Corporations," § 545.

(a) In an action to set aside a deed for fraud against the creditors of the grantor, the burden is on the attacking creditor to show that the deed was made with fraudulent intent on the part of the grantor.—*Totten v. Brady*, 54 Md. 170. [Cited and annotated in 31 L. R. A. 616, on participation in debtor's fraudulent intent invalidating transfer; in 36 L. R. A. 345, on creditor's right to buy property from debtor to satisfy debt.]

(b) Fraudulent intent in making a conveyance for value must be shown by the party alleging it by sufficient evidence. It will not be presumed.—*Glenn v. Grover*, 3 Md. Ch. 29. [Cited and annotated in 32 L. R. A. 40, 71, on participation in vendor's fraud invalidating transfer for good consideration.]

(c) Where an indebtedness at the time of making a voluntary conveyance is shown, the burden is on the grantee of establishing circumstances repelling any fraudulent intent.—*Sewell v. Baxter*, 2 Md. Ch. 447. [Cited and annotated in 20 L. R. A. 109, 110, 25 L. R. A. (N. S.) 1207, on parol evidence as to consideration of deed.]

### § 274.—Intent to defraud subsequent creditors.

#### Cross-References.

Intent to defraud subsequent creditors as element of fraud, see ante, §§ 68-70.

Sufficiency of evidence to show intent to defraud subsequent creditors, see post, § 298.

### § 275.—Intent to defraud subsequent purchasers.

#### Cross-References.

Intent to defraud subsequent purchasers as element of fraud, see ante, § 71.

Want or insufficiency of consideration as element of fraud as to subsequent purchasers, see ante, § 75.

(a) A subsequent sale, by a person who has made a voluntary settlement, to a purchaser without notice, is presumptive evidence of fraud, which throws on those claiming under that settlement the burden of proving that it was made bona fide.—*Cooke v. Kell*, 13 Md. 469.

### § 276.— Nature and circumstances of transaction in general.

#### Cross-References.

Badges of fraud in general, see ante, §§ 14, 15.

Disposition of entire property as constituting badge of fraud, see ante, § 10.

Nature and form of transfer as element or evidence of fraud, see ante, §§ 23-41.

(a) A failure to comply with act 1900, c. 579 (Code 1888, Supp., art. 83, § 18), providing that the sale of all or any portion of a stock of merchandise in other than the regular course of business will be presumed to be fraudulent unless the seller and purchaser makes an inventory of the goods before the sale, and unless the purchaser makes inquiry as to creditors of the seller, and gives them notice of the contemplated sale, is not conclusive evidence of fraud, but only creates a presumption thereof, which the purchaser must rebut.—*Hart v. Dean*, 93 Md. 432, 49 Atl. 661; *Hart v. Roney*, Id. (See Code 1911, art. 83, §§ 19-21; Id. [vol. 3], §§ 19, note, 100-103; act 1916, c. 371, p. 765, art. 83, § 101A.) [Cited and annotated in 2 L. R. A. (N. S.) 340, on bulk sales legislation.]

### § 277.— Consideration.

#### Cross-References.

Admissibility of evidence of consideration, see post, § 291.

Sufficiency of evidence on issue of consideration, see post, § 300.

Want or insufficiency of consideration as element of fraud, see ante, §§ 73-100.

(a) A judgment creditor seeking to set aside a conveyance as fraudulent has the burden of proving that the conveyance was made without consideration, or executed by the grantor with a fraudulent intent, and that the grantee knew of the intent, and participated therein.—*Tyner v. Johnson*, 119 Md. 627, 87 Atl. 266.

(b) Where a deed is assailed for fraud, the deed itself is prima facie evidence of what the consideration was on which it was executed.—*Thompson v. Williams*, 100 Md. 195, 60 Atl. 26.

(c) As against the husband's creditors, whose rights accrued prior to a transfer of real property by the husband to the wife in payment of an alleged debt, the burden is on the wife to establish that she was a bona fide creditor of the husband.—*Stockslager v.*

*Mechanics' Loan & Savings Institute*, 87 Md. 232, 39 Atl. 742. [Cited and annotated in 56 L. R. A. 825, 829, 830, 832, on burden of proof of husband's debt to wife for property received from her; in 43 L. R. A. (N. S.) 692, on validity of arrangement for household finances as against husband's creditors.]

(d) Purchases of real or personal property, made by a wife during coverture, are justly regarded with suspicion; and in contests with creditors of her husband the burden of proof is upon her to show affirmatively and distinctly that she paid for it with funds not furnished by her husband.—*Levi v. Rothschild*, 69 Md. 348, 14 Atl. 535. [Cited and annotated in 56 L. R. A. 833, on burden of proof of husband's debt to wife for property received from her.]

(e) The burden of proving that a voluntary conveyance or gift by a debtor is not fraudulent as against his creditors is upon those asserting its validity.—*Goodman v. Wineland*, 61 Md. 449.

(f) Where a transfer is alleged to be fraudulent, because without consideration, the burden of proving the fraud is on the party alleging it.—*Totten v. Brady*, 54 Md. 170.

[Cited and annotated in 31 L. R. A. 616, on participation in debtor's fraudulent intent invalidating transfer; in 36 L. R. A. 345, on creditor's right to buy property from debtor to satisfy debt.]

### § 278.— Relations between parties.

#### Cross-References.

Confidential relations of parties as element or evidence of fraud in general, see ante, §§ 101-108.

Rebuttal of presumptions, see ante, § 271. Sufficiency of evidence to impeach transactions between relatives, see post, § 299.

### § 279.— Reservations and trusts for grantor.

#### Cross-References.

Admissibility of evidence of reservations or trusts, see post, § 286.

Reservations and trusts for grantor as evidence of fraud, see ante, §§ 109-113. Sufficiency of evidence to show reservations of trusts, see post, § 299.

### § 280.— Preferences to creditors.

#### Cross-Reference.

As element or evidence of fraud, see ante, §§ 114-130.

### § 281.—Retention of possession.

#### Cross-References.

Rebuttal of presumptions, see ante, § 271.

Retention of possession or apparent title as element or evidence of fraud, see ante, §§ 131-154.

Sufficiency of evidence to show retention or change of possession, see post, § 299.

(a) To sustain a conveyance by a husband, when insolvent, to his wife, or his business, which he subsequently carries on ostensibly in his own name, the wife, as against creditors of the husband, must show that the transaction was fair and honest.—*Manning v. Carruthers*, 83 Md. 1, 34 Atl. 254. [Cited and annotated in 56 L. R. A. 825, on burden of proof of husband's debt to wife for property received from her.]

### § 282.—Knowledge and intent of grantee.

#### Cross-References.

Admissibility of evidence of grantee's knowledge and intent, see post, § 292.

Knowledge and intent of grantee as element of fraud, see ante, §§ 155-171.

Sufficiency of evidence to show knowledge and intent of grantee, see post, § 301.

(a) On May 16, 1898, plaintiff obtained a verdict against defendant D. in another case, and on the same day D. executed a deed of valuable real estate to his son's mother-in-law, who was at that time a stranger to him, and sent it for record with instructions to forward to her. On May 18, 1898, a motion was made for a new trial in the action against D., and the deed of the land was withdrawn from record by telegram. On May 19th or 20th, D. was in Philadelphia, and was introduced by his son to the defendant J. J., who had never been in the county where the land lay, proposed to D. to buy his land, and paid him \$4,000, which he had in his pocket in bills, without receiving a deed, which was executed by D. and wife next day after D. returned to Baltimore. On June 4th, the motion for a new trial was denied, and on that day the deed to J. was sent for record with instruction for haste. J. never went to see his purchase, but gave D. authority to manage it for him, and did not notify the tenant of the change of owners till after action was begun to set aside his deed. J. did not appear in person at the trial, though counsel purported to represent him. *Held*, that the deed to J. was void

as to creditors of D., since, under the circumstances, the failure of J. to appear at the trial justified the presumption that he was not a bona fide purchaser, but was a participator in D.'s attempt to place his land beyond the reach of creditors.—*Dawson v. Waltemeyer*, 91 Md. 328, 46 Atl. 994.

### § 283.—Good faith of purchasers.

### § 284.—Effect of transaction.

### § 285. Admissibility.

#### Cross-References.

Nature and form of transfer as evidence of fraud, see ante, §§ 23-41.

Admissibility of admissions or declarations to show fraud in general, see "Evidence," §§ 230-232, 236.

Admissibility of evidence as *res gestæ*, see "Evidence," §§ 118-128.

Admissibility of evidence in actions to set aside assignments for benefit of creditors, see "Assignments for Benefit of Creditors," § 351.

Admissibility of evidence of character or reputation to show fraud, see "Evidence," § 106.

Admissibility of examination in prior supplementary proceedings, see "Evidence," § 211.

Admissibility of parol evidence to show fraud in written conveyance or instrument, see "Evidence," § 434.

Admissibility of similar wrongful acts to show fraud, see "Evidence," § 135.

Competency of husband and wife as witnesses, see "Witnesses," § 52.

Cross-examination of party charged with fraud, see "Witnesses," § 275.

Hearsay evidence, see "Evidence," §§ 318, 322.

### § 286.—In general.

(a) Where in garnishment the issues were whether a transfer by the judgment debtor to his wife was in fraud of creditors and whether the money in the hands of the garnishee belonged to the judgment debtor or his wife, the question as to what business the wife was in was properly excluded as irrelevant and immaterial.—*Farley v. Colver*, 113 Md. 379, 77 Atl. 589.

(b) Where the evidence tends to show that the assignee had knowledge of the fact that the assignment was being made with intent on the part of the assignor to defraud his creditors, evidence of the acts of the assignee after the execution of the deed of assignment is admissible on the issue of fraud.—*Main v. Lynch*, 54 Md. 658. [Cited and annotated in 30 L. R. A. 467, 474, 481, 486, on intent to defraud sustaining attachment.]

(c) The administrator of S.'s estate intervened as claimant of property levied on by a judgment creditor of L. and W. It appeared by the record of the judgment that the trustees of L. and W. had sold the property to S. Proof was offered to the effect that S. had made the purchase for the use and benefit of L. and W., and that they had made the payment of the purchase money, so far as had been made. The claimant then offered in evidence a written lease made by S. to one A., demising the property for the term of three years, at a yearly rent of \$2,000. Held, that the lease was admissible in evidence to rebut the charge of fraud, and show acts of ownership exercised over the property by S.—*Cecil Bank v. Snively*, 23 Md. 253.

(d) Where a debtor's conveyance of land is attacked by creditors as fraudulent, and it appears that the debtor remains in possession after the conveyance as the grantee's lessee, evidence of conversations between the parties to the conveyance, occurring when the grantor gave to his grantee bonds for the annual rental, are admissible to show the purpose for which the bonds were given and as explanatory of the debtor's continued possession.—*Waters' Lessee v. Riffin*, 19 Md. 536.

### § 287.—Indebtedness.

#### Cross-References.

Indebtedness as evidence of fraud, see ante, §§ 54, 55.

Sufficiency of evidence to show indebtedness, see post, § 296.

### § 288.—Insolvency.

#### Cross-References.

Burden of proving insolvency, see ante, § 272.

Insolvency as element or evidence of fraud, see ante, §§ 56-62.

Return of execution unsatisfied as evidence of insolvency, see ante, § 241.

Sufficiency of evidence to show insolvency, see post, § 297.

Hearsay as evidence of insolvency, see "Evidence," § 322.

### § 289.—Intent of grantor.

#### Cross-References.

Burden of proving intent, see ante, § 273.

Intent as element of fraud, see ante, §§ 9, 63-72.

Sufficiency of evidence to show fraudulent intent, see post, § 298.

Admissibility of admissions or declarations showing grantor's fraud in general, see "Evidence," §§ 230-232, 236.

Admissibility of similar wrongful acts to show fraudulent intent, see "Evidence," § 135.

Competency of testimony of party as to his own intent, see "Evidence," § 151.

(a) Statements, made by the grantor shortly before executing the conveyance, are admissible on the question of his intention in conveying away his property.—*Cooke v. Cooke*, 43 Md. 522. [Cited and annotated in 32 L. R. A. 34, 36, 40, 42, on participation in vendor's fraud invalidating transfer for good consideration; in 41 L. R. A. (N. S.) 10, 12, on admissibility of vendor's declarations out of court, as to purpose in making transfer attacked as fraudulent.]

### § 290.—Nature and circumstances of transaction.

(a) Declarations of a grantor at the time of the conveyance are admissible to prove the deed fraudulent as to creditors.—*McDowell v. Goldsmith*, 2 Md. Ch. 370. [Cited and annotated in 22 L. R. A. (N. S.) 211, on public records as notice to set statute running against action based on fraud; in 41 L. R. A. (N. S.) 5, 8, on admissibility of vendor's declarations out of court, as to purpose in making transfer attacked as fraudulent.]

### § 291.—Consideration.

#### Cross-References.

Burden of proof of consideration, see ante, § 277.

Sufficiency of evidence on issue of consideration, see post, § 300.

Want or insufficiency of consideration as element or evidence of fraud, see ante, §§ 73-100.

Receipt as evidence of payment of consideration, see "Payment," § 70.

(a) In an action by a creditor, where it is sought to show that a certain mortgage, which covers a fund of the debtor sought to be held by attachment and garnishment proceedings, is void and fraudulent, for want of consideration, it is proper to admit the account kept by the mortgagee between himself and the mortgagor as a statement emanating from the mortgagee, tending to establish the indebtedness when the mortgage was given, and the amount of the debt secured.—*Stockbridge v. Fahnestock*, 87 Md. 127, 39 Atl. 95; *Allen v. Same*, Id.

(b) In an attachment to hold the fund of a debtor by garnishment, as against a mortgage of \$4,000, claimed to be fraudulent, the debtor and mortgagor was asked whether he owed anything to the trustee of his mortga-

gee, either individually or as trustee, when the mortgage was executed, to which he was allowed to answer that he did not. The trustee testified without objection that he had no pecuniary interest in the mortgage. *Held*, that the evidence was properly admitted.—*Stockbridge v. Fahnestock*, 87 Md. 127, 39 Atl. 95; *Allen v. Same*, Id.

(c) Where a mortgage on a fund sought to be held by a creditor by garnishment is attacked as fraudulent, a check payable to the mortgagor, and indorsed by him to the mortgagee, is admissible to establish the character of the consideration of the mortgage.—*Stockbridge v. Fahnestock*, 87 Md. 127, 39 Atl. 95; *Allen v. Same*, Id.

(d) When a deed sets forth a valuable consideration, no merely meritorious consideration can be proved, nor can the deed be upheld, as against creditors, as a voluntary gift.—*Diggs v. McCullough*, 69 Md. 592, 16 Atl. 453. [Cited and annotated in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

(e) Where a conveyance of real estate is attacked by the grantor's creditors as fraudulent, and it appears that the conveyance was for a stated consideration, in order to show payment of the consideration named, bills obligatory and the record of judgments against the grantor, which have been paid by and assigned to the grantee, are admissible.—*Waters' Lessee v. Riffin*, 19 Md. 536.

(f) When a deed purporting to have been made on a moneyed consideration is attacked as being fraudulent as against the creditors of the grantor, it cannot be propped up by proof of an indebtedness to the grantee for services as a clerk; such consideration being inconsistent with that expressed on the face of the deed.—*Glenn v. McNeal*, 3 Md. Ch. 349.

(g) Where an attempt was made to impeach a deed, for fraud, by creditors of the grantor, the grantee was allowed to introduce evidence to show that the consideration of the deed, stated therein to be \$10,000 in money, was composed in part of advances previously made and in part of moneys to be thereafter advanced.—*Cole v. Albers*, 1 Gill 412. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(h) Where a judgment has been confessed on a note given "for value received," and creditors of the judgment debtor attempt to impeach the judgment by showing that the note was not given for value, but was fictitious and fraudulent, it is competent for those who have taken the judgment to show what the consideration was.—*Harris v. Alcock*, 10 G. & J. 226, 32 Am. Dec. 158; *Chapman v. Same*, Id. [Cited and annotated in 44 L. R. A. (N. S.) 23, on title obtained by purchaser knowing inability to pay; in 51 L. R. A. (N. S.) 1208, on creation of trust in personalty by parol; in 17 L. R. A. 611, as to whether a judgment is a contract.]

(i) Where the expressed consideration of a deed alleged to be fraudulent has not been disproved, evidence of other full and adequate considerations is admissible to repel a charge of fraud.—*Clagett v. Hall*, 9 G. & J. 80. [Cited and annotated in 20 L. R. A. 114, on parol evidence as to consideration of deed; in 39 L. R. A. (N. S.) 907, on grantee's oral promise to grantor as giving rise to constructive trust.]

#### § 292.— Knowledge and intent of grantee.

##### Cross-References.

Admissibility of prior or subsequent conduct to show fraud in general, see ante, § 286.

Knowledge and intent of grantee as an element of fraud, see ante, §§ 155-171.

Presumptions and burden of proving knowledge and intent of grantor, see ante, § 282.

Sufficiency of evidence to show knowledge and intent of grantee, see post, § 301.

Competency of testimony of grantee as to his own intent, see "Evidence," § 151.

(a) On the issue as to whether a creditor, at the time of accepting an assignment and bill of sale from his debtor, knew that the latter was insolvent, evidence that proceedings in bankruptcy were instituted against both the debtor and the creditor but a few days after the execution of the assignment and bill of sale was not admissible.—*Ecker v. McAllister*, 54 Md. 362.

(b) Where, after the execution of a deed of mortgage, the mortgagee lent money and sold goods to the mortgagor, and took notes for the payment of his debt in semi-monthly installments, this is evidence that he did not know his debtor to be in an insolvent condition.—*Cole v. Albers*, 1 Gill 412. [Cited and annotated, see supra, § 291.]

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 293.— Good faith of purchaser.***Cross-References.*

Burden of proving good faith, see ante, § 283.

Sufficiency of evidence to show good faith of purchaser, see post, § 302.

**§ 294. Weight and sufficiency.***Cross-References.*

Evidence sufficient to rebut presumption, see ante, § 271.

Instructions as to degree of proof, see post, § 309.

Questions for jury, see post, § 308.

Conclusiveness of evidence on party introducing it, see "Evidence," § 591.

Evidence of discharge of debt, see "Payment," § 73.

Evidence of grounds of attachment, see "Attachment," § 47.

In actions by assignee or trustee in insolvency, see "Insolvency," § 99.

Pleadings as evidence in equity, see "Equity," §§ 340, 345.

**§ 295.— In general.***Cross-Reference.*

Evidence to sustain allegation for appointment of receiver, see post, § 305.

(a) Where, in a suit to set aside a deed as fraudulent, complainant proved the foreclosure of a mortgage against the grantor, and the entry of a deficiency decree, and a conveyance of the land in question shortly before the foreclosure, complainant had established a prima facie case.—*Wise v. Pfaff*, 98 Md. 576, 56 Atl. 815.

**§ 296.— Indebtedness.***Cross-References.*

Admissibility of evidence, see ante, § 287.

As element or evidence of fraud, see ante, §§ 54, 55.

(a) A recital in a deed from husband to wife of the grantor's solvency is not, in an action attacking the conveyance as in fraud of creditors, even prima facie evidence of the truth of such statement.—*Milholland v. Tiffany*, 64 Md. 455, 2 Atl. 831.

(b) A bill by creditors to vacate their debtor's conveyance as fraudulent charged that the deeds covered all of the grantor's real and personal estate. The defendant grantee denied this allegation, averring that the debtor, after delivery of the deed to him, was seised and possessed of real estate abundantly sufficient, as defendant believed, to pay complainants. *Held*, that the mere production of deeds of conveyance of such other land, unaccompanied by any proof of the

existence of such property, of the title of the debtor thereto, or of his possession thereof, or of the possession thereof by the grantee, was wholly insufficient to sustain the defense.—*Birely v. Staley*, 5 G. & J. 432, 25 Am. Dec. 303. [Cited and annotated in 17 L. R. A. 348, on priority as to proceeds of creditors' bills; in 23 L. R. A. (N. S.) 93, on conditions precedent to equitable remedies of creditors.]

**§ 297.— Insolvency.***Cross-References.*

See ante, § 296.

Admissibility of evidence, see ante, § 288.

Burden of proving insolvency, see ante, § 272.

Execution unsatisfied as evidence of exhaustion of legal remedy, see ante, § 241.

Insolvency as element of fraud, see ante, §§ 56-62.

**§ 298.— Intent of grantor.***Cross-References.*

Admissibility of evidence of intent, see ante, § 289.

Burden of proving intent, see ante, §§ 273-275.

Intent of grantor as element of fraud, see ante, §§ 9, 63-72.

(a) Evidence in an action by a judgment creditor to set aside a conveyance, alleged to have been made as a part of the debtor's scheme to delay and defraud creditors, held sufficient to show a deliberate scheme on the debtor's part to keep his property beyond the reach of creditors.—*Abramson v. Horner*, 115 Md. 232, 80 Atl. 907.

(b) In a suit to set aside a deed, made by a husband and wife, as fraudulent, it appeared that a little over a week after complainant wrote the husband and wife that the money due under a mortgage must be paid they conveyed the land in question for the express consideration of \$5 and other considerations, and that the husband and wife knew that a deficiency decree would probably be entered, which was the case. The wife was indebted to the grantee on a note for \$400, but it was indorsed by other parties, and was not due at the time the deed was made. The answer of the grantee alleged that the consideration was \$400, but he testified that it was \$585, and it was shown that none of the rents due from the tenant of the property conveyed were received by the grantee until several months after the conveyance. *Held*, that the

evidence sustained a finding that the deed was made with intent to defraud complainant.—*Wise v. Pfaff*, 98 Md. 576, 56 Atl. 815.

(c) Though subsequent creditors, in order to impeach a conveyance of their debtor as fraudulent, must show the existence of an intention to accomplish that purpose, the intent may be gathered from the deed and the acts of the parties and the surrounding circumstances, and need not necessarily be proven as an independent fact.—*Baltimore High Grade Brick Co. v. Amos*, 95 Md. 571, 52 Atl. 582, 53 Atl. 148.

(d) Fraudulent intent may be gathered from surrounding circumstances.—*Stewart v. Union Bank*, 2 Md. Ch. 58; *Powles v. Dille*, Id. 119. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.] *Zimmer v. Miller*, 64 Md. 296, 1 Atl. 858. [Cited and annotated in 18 L. R. A. 132, on usury in loans by building associations; in 29 L. R. A. 133, on application on mortgage of payments on loan association stock.]

(e) Indebtedness of a father at the time of the execution of a voluntary conveyance to his son is prima facie evidence of a fraudulent intent with respect to the father's prior creditors.—*Bullett v. Worthington*, 3 Md. Ch. 99. (See *Worthington v. Bullitt*, 6 Md. 172.)

### § 299.— Nature and circumstances of transaction.

#### Cross-References.

Admissibility of circumstances of transaction, see ante, § 290.

Nature and form of transfer as element or evidence of fraud, see ante, §§ 23-41.

Presumptions and burden of proof, see ante, § 276.

(a) A debtor transferred the only property he had, with which to meet his creditors' claims, to his wife, for a recited consideration of \$800 cash. His answer to an action to set the deed aside alleged that the conveyance was made to secure his wife for loans represented by notes aggregating \$561.34. On cross-examination he, for the first time, testified that his wife was also to satisfy a mortgage of \$300 on the place, though it did not appear that she had other property with which to do so. The property having been sold at trustee's sale, by order of court, brought \$1,195 cash. One of the notes, for \$193, was dated a day subsequent

to the date of the deed, and the money for which it was testified it was given was not used for more than a month afterwards. *Held*, that the deed was void as to creditors.—*Downs v. Miller*, 95 Md. 602, 53 Atl. 445.

(b) In a suit to set aside a conveyance by parents to their son as in fraud of creditors defendants' verified answers denied the fraud alleged in the bill, and fully answered the interrogatories as to the \$1,500 stated in the deed as consideration. It appeared that the conveyance was executed subsequent to complainant's demand on the father to pay a claim for which he was surety, and shortly before suit was brought thereon; but that it was made in pursuance of a promise to the son, four or five months before either had any knowledge of complainant's claim, and in consideration of bona fide advances. The testimony of defendants as complainant's witnesses, did not impair the verity of their answers or the bona fides of the transaction. Complainant failed to show that there was any other creditor besides himself and the son, and failed to contradict the answers and testimony of defendants. *Held*, that the bill would be dismissed.—*Zahn v. Smith*, 71 Md. xiv, memorandum case, 18 Atl. 865, full report.

(c) L., for the consideration, set forth in the deed, of a mortgage debt and a judgment, and in payment of this indebtedness, conveyed to S. all his interest in the real and leasehold property of his father, and also his distributive share of the personal estate, subject to a prior mortgage lien. It appeared from the testimony of the grantor and grantee that the deed was made upon a good consideration, and bona fide in the payment of a debt due to S. The disparity between the real value and the consideration set forth was not so glaring as to justify an inference of fraud. L. was insolvent, though this was not known to S. L. continued to live in a house, his interest in which was conveyed to S. by the deed, but which had been recorded at once, and there was no evidence of a secret trust in favor of L. The mortgage debt was included in the judgment, and the note upon which the judgment was confessed was antedated. *Held*, on a bill filed to set aside this deed, as made, with



the intent to hinder, delay, or defraud L.'s creditors, that the facts of the case, though some were suspicious, were not such as to justify the court in declaring the deed fraudulent.—*Fuller v. Brewster*, 53 Md. 358.

### § 300.—Consideration.

#### *Cross-References.*

Admissibility of evidence of consideration, see ante, § 291.

Burden of proof of consideration, see ante, § 277.

Questions for jury, see post, § 308.

Want or insufficiency of consideration as evidence of fraud, see ante, §§ 73-100.

Conclusiveness of debtor's testimony in supplementary proceedings on creditor introducing it, see "Evidence," § 591.

(a) A deed recited a consideration of \$5,000. Two of complainant's witnesses respectively testified that the land was worth \$6,000 to \$8,000, but that at forced sale it would not bring that much. Complainant's only other witness gave a speculative opinion of \$8,000 as being what it might bring if cut up into lots. *Held*, insufficient to show a disparity so glaring as to stamp the transaction with fraud.—*Crooks v. Brydon*, 93 Md. 640, 49 Atl. 921.

(b) The recital of the consideration expressed in a deed from a husband to a wife as the sum of \$2,100 "heretofore received" by the husband from his wife in extinguishment of the debt "thereby created," does not evidence an obligation on the part of the husband that the wife could have enforced against him or his estate, and therefore cannot be relied on as evidence of a valuable consideration against his creditors.—*Stockslager v. Mechanics' Loan & Savings Institute*, 87 Md. 232, 39 Atl. 742. [*Cited and annotated* in 56 L. R. A. 825, 829, 830, 832, on burden of proof of husband's debt to wife for property received from her; in 43 L. R. A. (N. S.) 692, on validity of arrangement for household finances as against husband's creditors.]

(c) On a bill by a husband's creditors to set aside a deed to the wife on the ground of fraud, the burden of showing that she furnished the purchase money is on the wife; and where her testimony, and that of her husband, in regard to such purchase money, is contradictory and inconsistent, and it appears that the larger part was received by the wife from her husband shortly before

his failure in business, and with full knowledge on her part of his failing circumstances, the court properly finds that the wife has failed in her proof, though it is shown that she had previously loaned the husband more than the amount received from him, there being no proof that he promised to repay such loan.—*Levi v. Rothschild*, 69 Md. 348, 14 Atl. 535. [*Cited and annotated* in 56 L. R. A. 833, on burden of proof of husband's debt to wife for property received from her.]

(d) A deed of trust by a husband for the benefit of his wife and children recited as the consideration upon which it was executed that the husband agreed to make the conveyance in consideration of her uniting with him in assigning her mortgage in part payment of land purchased by the husband. *Held*, that the deed was prima facie proof of the consideration, even as against creditors of the husband assailing the deed for fraud.—*Stockett v. Holliday*, 9 Md. 480. [*Cited and annotated* in 20 L. R. A. 111, on parol evidence as to consideration of deed; in 56 L. R. A. 832, on burden of proof of husband's debt to wife for property received from her.]

### § 301.—Knowledge and intent of grantee.

#### *Cross-References.*

Admissibility of evidence of grantee's knowledge and intent, see ante, § 292.

Knowledge and intent of grantee as element of fraud, see ante, §§ 155-171.

Presumptions, and burden of proving knowledge and intent of grantee, see ante, § 282.

Questions for jury, see post, § 308.

(a) In a suit by a judgment creditor to set aside a conveyance of the debtor as fraudulent against creditors, evidence *held* not to show that the grantee paying a valid consideration had notice of the grantor's fraud.—*Tyner v. Johnson*, 119 Md. 627, 87 Atl. 266.

(b) In an action by a judgment creditor to set aside a mortgage, executed by the debtor to his sisters during the pendency of the suit at which the judgment was obtained, evidence examined, and *held* to show that the mortgagees in accepting the mortgage were parties to the scheme of the mortgagors to put their property beyond the reach of their creditor, and the mortgage was therefore void.—*McCauley v. Shockey*, 105 Md. 641, 66 Atl. 625.

(c) In a bill in chancery to set aside a conveyance of land as fraudulent against creditors, evidence was introduced to show that the grantor was under great apprehension lest her creditors would press for settlements, and take her property, and that this fear was excited by the grantee, and that he advised a transfer to him as the only means of saving her property; also other officious acts of the grantee. *Held*, that the parties to the deed designed to hinder and delay the creditors of the grantor.—*McDowell v. Goldsmith*, 6 Md. 319, 61 Am. Dec. 305. [Cited and annotated in 41 L. R. A. (N. S.) 5, 6, 8, on admissibility of vendor's declarations out of court, as to purpose in making transfer attacked as fraudulent.]

### § 302.— Good faith of purchaser.

#### (H) DISCOVERY, INJUNCTION, AND RECEIVER.

##### *Cross-Reference.*

Conditions precedent to suit in equity to set aside fraudulent conveyance, see ante, § 241.

### § 303. Discovery.

##### *Cross-Reference.*

In creditors' suits in general, see "Creditors' Suit," §§ 31-33.

### § 304. Injunction.

##### *Cross-References.*

In actions by trustee in bankruptcy, see "Bankruptcy," § 301.

Restraining conveyance by debtor, see "Injunction," § 44.

(a) A creditor cannot, before judgment, maintain a bill for an injunction to prevent a debtor from disposing of his property in fraud of creditors.—*Balls v. Balls*, 69 Md. 388, 16 Atl. 18. [Cited and annotated in 23 L. R. A. (N. S.) 27, 34, 37, 116, on conditions precedent to equitable remedies of creditors.]

(b) The complainants alleged in a bill for an injunction that C., fraudulently combining with M. to prevent them from obtaining satisfaction of a judgment against C., executed a bill of sale of his stock in trade, goods, etc., in his store and dwelling for a pretended consideration of \$625.90, and that the bill was executed in bad faith, even if a certain part of this consideration was paid, being intended to cheat the complainants, and hinder them from obtaining the payment of their debt. Also, that C. held the property, notwithstanding the bill

of sale, and continued to use it as his own, and to devote the proceeds to his own use; and that the complainants could not discover any other property which belonged to C., except that in question. *Held*, that the allegations were sufficient to warrant an injunction by which C. and M., and all their agents and employees, were to be enjoined not to sell, dispose of, or remove any of the said property, etc.—*Conolly v. Riley*, 25 Md. 402. [Cited and annotated in 21 L. R. A. 470, on presumption as to law of other states.]

(c) A bill by a creditor who has not reduced his claim to judgment and execution, nor in any other manner acquired a lien upon his debtor's property, alleging that the debtor is selling his goods and applying the proceeds to his own use and the use of others without consideration, and thus, and in other ways, is wasting his resources, and is sending large quantities of his goods beyond the reach of his creditors, and is utterly insolvent, does not make a case for the interposition of a court of equity to restrain, by injunction, the debtor in the enjoyment and power of disposition of his property.—*Rich v. Levy*, 16 Md. 74. [Cited and annotated in 23 L. R. A. (N. S.) 19, on conditions precedent to equitable remedies of creditors.]

(d) A bill filed by a creditor against his debtor, alleging, in substance, that the complainant fears and believes that it is the purpose of the defendant to perpetrate a fraud upon him by placing his effects beyond his reach before the complainant can obtain a judgment on his claims, does not authorize the granting of an injunction.—*Hubbard v. Hubbard*, 14 Md. 356.

(e) A bill filed by the partnership creditor charged that the partnership effects had been misapplied, and appropriated to the private purposes of the partners, by which the creditors had been delayed, hindered, and defrauded; that the firm was insolvent; that a dissolution or pretended dissolution of the firm and a transfer of the goods of the firm to defraud the creditors, and an appropriation of the effects to the private purposes of the partners was designed; and that, unless they were arrested in the prosecution of this purpose, the complainant will sustain great and irreparable injury. *Held*,

that the allegations were sufficient to justify the issue of an injunction to restrain the sale of all the partnership effects included in the transfers among the partners which are alleged to be fraudulent, and which can be found in the control of either partner.—*Sanderson v. Stockdale*, 11 Md. 563. [Cited and annotated in 29 L. R. A. 682, on firm assumption of partners individual debts; in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors.]

### § 305. Appointment of receiver.

#### Cross-References.

Judgment, see post, § 312.

Lien or rights acquired by creditor bringing suit, see post, § 321.

Sufficiency of pleading in general, see ante, § 259.

In creditors' suits in general, see "Creditors' Suit," § 33.

Pendency and condition of cause affecting jurisdiction to make appointment, see "Receivers," § 5.

Rights of mortgagee in possession as against receiver, see "Mortgages," § 191.

Sufficiency of allegations authorizing appointment without notice, see "Receivers," § 35.

(a) A bill filed by a creditor against his debtor, alleging, in substance, that the complainant fears and believes that it is the purpose of the defendant to perpetrate a fraud upon him by placing his effects beyond his reach before the complainant can obtain a judgment on his claims, does not authorize the appointment of a receiver.—*Hubbard v. Hubbard*, 14 Md. 356.

#### (I) TRIAL.

#### Cross-Reference.

Right to trial by jury, see "Jury," § 14.

### § 306. Mode and conduct in general.

### § 307. Reference.

### § 308. Questions for jury.

#### Cross-References.

In actions to set aside chattel mortgages in general, see "Chattel Mortgages," § 202.

Payment of indebtedness as question for jury, see "Payment," § 76.

(a) The existence of reasonable cause to believe that the debtor was insolvent at the time a creditor took from his debtor a bill of sale and assignment of book accounts to secure the amount of the debt is a question for the jury.—*Ecker v. McAllister*, 45 Md. 290. [Cited and annotated in 23 L. R. A. (N. S.) 376, 386, 396, on right of one to testify as to his intent.]

(b) Where a deed is fraudulent on its face, there is nothing for the jury to pass upon.—*Green v. Trieber*, 3 Md. 11. [Cited and annotated in 50 L. R. A. (N. S.) 734, on assignment for creditors: provision for release.]

### § 309. Instructions.

(a) It is not error, in an action wherein it is sought to hold a fund in the hands of a garnishee as against a mortgage alleged to be fraudulent, to refuse instructions asked by the garnishee which ignore all the proofs offered to show the fraudulent character of the mortgage.—*Stockbridge v. Fahnestock*, 87 Md. 127, 39 Atl. 95; *Allen v. Same*, Id.

(b) Property which had been transferred by a bill of sale was attached on the ground that the transfer was fraudulent, and the property was claimed by the vendee under the bill of sale. *Held*, that it was not error to refuse to instruct that, if the property attached belonged to the claimant at the time of levying the attachment, the verdict must be for the claimant, as the instruction, though correct in the abstract, might have misled the jury, if unqualified by a further instruction that, if the sale was fraudulent, or made with intent to hinder and delay creditors, the claimant was not entitled to a verdict.—*Franklin v. Clafin*, 49 Md. 24.

(c) It is error to instruct the jury that they may infer that a bill of sale was fraudulent as to creditors, if the vendor was, at the time of making it, indebted to several persons, without submitting to them any question in regard to the amount of his indebtedness, or his means or circumstances.—*Dietus v. Fuss*, 8 Md. 148.

(d) In a case where the court would have been authorized to instruct a jury that a deed for a valuable consideration, made subsequent to a prior voluntary conveyance of which the grantee had notice, was void, if such an instruction had been asked for, a proviso, added to a prayer, submitting a question of fraud under the contract to the jury, that if they also find the consideration inadequate, then the deed is void, though unnecessary, will not vitiate the prayer.—*City of Baltimore v. Williams*, 6 Md. 235.

(e) Proof that one who took a grant of real estate, made subsequent to a voluntary grant

of the same estate, received upon the same day a mortgage of land as an indemnity against the voluntary conveyance, will sustain a prayer to the jury to find notice of the prior voluntary conveyance.—*City of Baltimore v. Williams*, 6 Md. 235.

### § 310. Verdict and findings.

#### Cross-References.

Presumptions as to value of homestead, see post, § 327.

Necessity of findings on dismissal of suit tried by court without jury, see "Trial," § 388.

Sufficiency of conclusions of law, see "Trial," § 395.

#### (J) JUDGMENT OR DECREE AND EXECUTION.

#### Cross-References.

In actions to set aside assignments for benefit of creditors, see "Assignments for Benefit of Creditors," § 353.

In actions to set aside conveyances by decedent, see "Executors and Administrators," § 453.

In actions to set aside conveyances in fraud of wife's right to alimony, see "Divorce," § 276.

Judgment against property claimed to be covered by attachment, see "Attachment," § 217.

### § 311. Judgment or decree.

#### Cross-References.

Opening or vacating judgment, see "Judgment," §§ 142, 368.

Right of creditor attacking conveyance as fraudulent to attack it as a preferential assignment on failure of proof, see "Action," § 37.

Right to decree pro confesso, see "Equity," § 418.

### § 312.— In general.

### § 313.— As to property transferred.

#### Cross-References.

Validity of transaction as between parties in general, see ante, § 172.

Bar of dower in land fraudulently conveyed by setting aside of conveyance, see "Dower," §§ 44, 53.

Protection and enforcement of homestead exemption, see "Homestead," § 189.

(a) Where a voluntary conveyance from a husband to his wife is void, under Code, 1888, art. 45, § 1, as against existing creditors, and is fraudulent in fact, it is not error for the court, on setting it aside, to decree that it is "absolutely null and void, to all intents and purposes whatsoever," where the decree further directs that the property shall be sold, and the proceeds brought into court, to be distributed under the direction of the

court.—*Norberg v. Records*, 84 Md. 568, 36 Atl. 116. (See Code 1911, art. 45, § 1.)

### § 314.— Personal judgment.

#### Cross-Reference.

Personal liability of grantee, see ante, § 182.

(a) In a suit to set aside a deed as fraudulent, the grantee still held the land under the deed, and the decree in favor of complainant ordered that the grantee bring into court within a specified time a specified sum, which had been found to be the value of the property, and that, unless the grantee should bring in the money, the property should be sold. *Held*, that the decree was unwarranted, inasmuch as it was in personam.—*Wise v. Pfaff*, 98 Md. 576, 56 Atl. 815.

(b) Where a creditor of a mortgagor sued to have mortgages vacated and declared void as being in fraud of creditors, and to subject the land mortgaged to its claim, and for general relief, on the validity of the first mortgage being sustained because held by a bona fide purchaser, and the second because there was no evidence to attack it, it was not error to dismiss the bill, instead of passing a personal money decree against the mortgagor and the mortgagee for the amount of which they defrauded plaintiff, as such relief would be beyond the object of the bill.—*Riverside Brick Co. v. Wheatley*, 92 Md. 410, 48 Atl. 715.

(c) Where a bill to set aside a transfer as in fraud of creditors not only contains no special prayer for a personal decree against the transferee for the value of the goods, he having disposed of same, but contains no allegations that could have informed the transferee that any such claim would be made, it was error to render such a decree.—*Chatterton v. Mason*, 86 Md. 236, 37 Atl. 960.

### § 315.— Construction and operation.

#### Cross-Reference.

Bar of dower, see "Dower," § 44.

(a) When a conveyance by a debtor is declared to be fraudulent as to creditors, and is declared void, and the property decreed to be sold and the proceeds to be brought into court, such decree is conclusive, and cannot be opened and modified, in the subsequent proceedings, to ascertain the amount

of the debts of the complainants and to distribute the proceeds of the sale.—*Strike's Case*, 1 Bland 57. (See *Strike v. McDonald*, 2 H. & G. 191.)

**§ 316. Execution and enforcement of judgment or decree in general.**

(a) A conveyance by a debtor, having been found to be in fraud of creditors, was declared void, and the property ordered to be sold. Held, that an account of the rents and profits of the property sold should be taken.—*Strike's Case*, 1 Bland 57. (See *Strike v. McDonald*, 2 H. & G. 191.)

**§ 317. Sales and conveyances under order of court.**

**(K) DISPOSITION OF PROPERTY OR PROCEEDS.**

*Cross-References.*

Effect of judgment or decree setting aside conveyance as fraudulent, see ante, § 315.

Rights and liabilities of grantee as to property fraudulently conveyed, see ante, §§ 181-184.

Purchasers pendente lite, see "Lis Pendens."

Revival of dower right of grantor's wife, see "Dower," § 53.

**§ 318. Subjection to claims of creditors in general.**

*Cross-Reference.*

Marshaling assets, see "Marshaling Assets and Securities," § 4.

(a) Where, on a creditors' bill, conveyances by the debtor are declared void as to the complainant, the property is to be dealt with as if no such conveyances had been made.—*Strike's Case*, 1 Bland 57. (See *Strike v. McDonald*, 2 H. & G. 191.)

**§ 319. Costs and expenses.**

*Cross-References.*

In suits to have preferential transfers declared to be assignments for creditors, see "Assignments for Benefit of Creditors," § 295.

**§ 320. Mortgages and other liens.**

**§ 321. Priorities of creditors.**

*Cross-References.*

Equities between creditors of grantor and creditors of grantee, see ante, § 179.

Reference to ascertain liens, see ante, § 307.

Effect of suit as lis pendens, see "Lis Pendens," § 22.

Rights acquired by creditors' suit in general, see "Creditors' Suit," §§ 35, 36.

(a) On proceedings in equity by creditors to subject to their debts a deceased debtor's property, fraudulently conveyed, where their claims to relief rest on liens acquired by judgment against real, and by fi. fa. against personal, property, before the debtor's death, they must be paid out of the fund pursued,—if land, according to the priority of their judgments; if personal property, according to their respective priorities acquired by the delivery of their several fi. fas. to the sheriff.—*Birely v. Staley*, 5 G. & J. 432, 25 Am. Dec. 303. [Cited and annotated in 17 L. R. A. 348, on priority as to proceeds of creditors' bills; in 23 L. R. A. (N. S.) 93, on conditions precedent to equitable remedies of creditors.]

(b) In the distribution of the fund resulting from proceedings by creditors to subject the property of their deceased debtor, which has been fraudulently conveyed, to the payment of their debts, a creditor who has obtained judgment since the debtor's death, against his representatives, is entitled to no priority over simple contract creditors.—*Birely v. Staley*, 5 G. & J. 432, 25 Am. Dec. 303. [Cited and annotated, see supra.]

**§ 322. Grantee or purchaser as creditor.**

*Cross-References.*

Claims or liens acquired by grantee on property as against creditors, see ante, § 184.

Right to reimbursement of consideration and expenditures, see ante, § 183.

**§ 323. Application to judgment or execution.**

**§ 324. Right to surplus.**

*Cross-References.*

Effect of judgment or decree, see ante, § 315.

Validity of transaction as between parties in general, see ante, § 172.

**(L) REVIEW.**

*Cross-References.*

See "Appeal and Error," §§ 169-320, 337-457, 463-475.

Correction of errors in judgment by appellate court, see "Appeal and Error," § 1152.

Courts of appellate jurisdiction, see "Courts," §§ 213, 219, 220, 222, 231.

Persons entitled to appeal as affected by interest in subject-matter, see "Appeal and Error," § 150.

**§§ 325-328. (See Analysis.)**

**IV. CRIMINAL RESPONSIBILITY.***Cross-Reference.*

Execution of deed to property previously conveyed to another, see "Fraud," § 68.

§§ 329-331. (See Analysis.)

**FRAUDULENT PREFERENCES.\****Cross-References.*

To creditors affecting assignment for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 12, 104-139, 156, 230.

To creditors affecting bankrupt and bankruptcy proceedings, see "Bankruptcy," §§ 58, 159-166, 311.

To creditors affecting insolvent proceedings in insolvency, see "Insolvency," § 61.

To creditors in general, see "Fraudulent Conveyances," §§ 114-130.

**FRAUDULENT REMOVAL.***Cross-Reference.*

Of property ground for attachment, see "Attachment," § 45.

**FRAUDULENT REPRESENTATIONS.\****Cross-References.*

See "Fraud."

Affecting right to specific performance, see "Specific Performance," § 53.

Affecting validity of bill or note, see "Bills and Notes," § 103.

Affecting validity of bond, see "Bonds," § 40.

Affecting validity of contract in general, see "Contracts," § 94.

Affecting validity of contract of sale, see "Sales," §§ 38-41, 43-47; "Vendor and Purchaser," §§ 33-38.

Affecting validity of contract of suretyship, see "Principal and Surety," § 41.

Affecting validity of deed, see "Deeds," § 70.

Affecting validity of guaranty, see "Guaranty," § 20.

Affecting validity of release, see "Release," § 17.

Affecting validity of subscriptions in general, see "Subscriptions," § 8.

Affecting validity of subscription to stock, see "Corporations," § 80.

Application of statute of frauds, see "Frauds, Statute of," § 42.

As to stock in building and loan associations, see "Building and Loan Associations," § 8.

By plaintiff as defense to action for infringement of trade-mark or for unfair competition, see "Trade-Marks and Trade-Names," § 85.

By seller of goods distinguished from warranty, see "Sales," § 251.

In application for insurance, see "Insurance," § 262.

Rescission of contract by act of party as a remedy, see "Contracts," § 259.

Rescission of contract of sale by act of party as a remedy, see "Sales," § 114; "Vendor and Purchaser," §§ 90, 108.

**FRAUDULENT SALES.***Cross-Reference.*

See "Fraudulent Conveyances."

**FRAY.***Cross-Reference.*

See "Affray."

**FREEDMEN.\****Cross-Reference.*

See "Slaves."

**FREEDOM.***Cross-References.*

Constitutional guaranty of freedom of conscience, see "Constitutional Law," § 84.

Constitutional guaranty of freedom of speech and of the press, see "Constitutional Law," § 90.

Proceedings for freedom of slaves, see "Slaves," § 21.

Right of slaves to freedom, see "Slaves," § 20.

**FREEDOM OF SPEECH AND OF THE PRESS.\****Cross-References.*

Constitutional guaranties, see "Constitutional Law," § 90.

Instructions in prosecution for libel, see "Libel and Slander," § 159.

Privilege in publication and discussion of news, see "Libel and Slander," § 49.

**FREE FISHERY.\****Cross-Reference.*

See "Fish," § 5.

**FREE GOODS.***Cross-References.*

See "Customs Duties," § 38.

Services of consuls in certifying invoices for free goods, see "Ambassadors and Consuls," § 5.

**FREEHOLD.\****Cross-References.*

Action on the case for injuries to freehold, see "Action on the Case," § 1.

Appealability of judgments in actions involving freehold, in general, see "Appeal and Error," § 38.

Appellate jurisdiction of cases involving freehold, see "Courts," §§ 213, 219.

Conveyances to be acknowledged, see "Acknowledgment," § 4.

Estates, see "Estates," § 4.

**FREEHOLDERS.\****Cross-References.*

Competency of assignee, see "Assignments for Benefit of Creditors," § 201.

Petition by freeholders for adoption of stock law, see "Animals," § 50.

\*Annotation: Words and Phrases, same title.

Qualifications of grand jurors, see "Grand Jury," § 5.

Qualifications of jurors, see "Jury," § 49.

Right to abatement of warrant of arrest, see "Arrest," § 43.

### **FREE LIST.**

#### *Cross-Reference.*

See "Customs Duties," § 38.

### **FREEMASONS.**

#### *Cross-References.*

See "Associations"; "Beneficial Associations."

### **FREEZING.\***

#### *Cross-Reference.*

Injuries to goods transported by express company, see "Carriers," § 133.

### **FREIGHT.\***

#### *Cross-References.*

See "Carriers," §§ 12, 26-32, 188-197; "Shipping," §§ 144-154.

Allowance to wrongdoer of freight charges paid by him, see "Damages," § 61.

Carriage of goods, see "Carriers," §§ 39-202; "Shipping," §§ 101-155.

Carriage of live stock, see "Carriers," §§ 203-231.

Provisions in charter party, see "Shipping," § 49.

Recovery in admiralty, see "Admiralty," §§ 12, 28.

Regulation of rates as violating obligation of contracts, see "Constitutional Law," § 135.

Regulation of rates by interstate commerce commission, see "Commerce," §§ 85-98.

State regulation of rates as interference with interstate commerce, see "Commerce," §§ 34, 61.

### **FREIGHT BILL.\***

#### *Cross-Reference.*

See "Carriers," §§ 46-69.

### **FREIGHT CAR.\***

#### *Cross-References.*

Construction and equipment, see "Railroads," § 229.

Liability of master for injury to servant from defects, see "Master and Servant," § 111.

### **FREIGHT TRAINS.\***

#### *Cross-References.*

Carriage of and injuries to passengers, see "Carriers," §§ 243, 244, 280.

Injuries to trespassers on freight trains, see "Railroads," §§ 276, 277.

### **FRENCH GRANTS.**

#### *Cross-Reference.*

See "Public Lands," §§ 197-224.

### **FRENCH SPOILIATION CLAIMS.**

#### *Cross-References.*

See "United States," § 101.

Appointment of administrator to collect, see "Executors and Administrators," § 22.

As assets of claimant's estate, see "Executors and Administrators," § 58.

Inheritance by bastard, see "Bastards," § 100.

Jurisdiction of probate court, see "Executors and Administrators," § 469.

### **FREQUENTING.\***

#### *Cross-References.*

Billiard and pool rooms by infants, see "Infants," § 13.

Disorderly house, see "Disorderly House," § 7.

Gaming house, see "Gaming," § 77.

Permitting prohibited persons from frequenting saloons, see "Intoxicating Liquors," § 144.

### **FRESHETS.\***

#### *Cross-References.*

As defense to action for injury to passenger, see "Carriers," § 285.

As defense to loss of or injury to goods by carrier, see "Carriers," § 119.

In general, see "Highways," § 120; "Municipal Corporations," §§ 834, 835; "Railroads," §§ 106-108; "Waters and Water Courses," §§ 115-126, 159-179.

### **FRIENDLY SOCIETIES.**

#### *Cross-Reference.*

See "Beneficial Associations."

### **FRIENDLY SUIT.**

#### *Cross-References.*

See "Submission of Controversy."

Collusive actions, see "Action," § 8.

### **FRIEND OF THE COURT.**

#### *Cross-Reference.*

See "Amicus Curiae."

### **FRIGHT.\***

#### *Cross-References.*

See "Threats."

Admissions made under duress, see "Evidence," § 203.

Causing injury by fright as actionable wrong, see "Torts," § 7.

Confessions procured by duress, see "Criminal Law," § 522.

Consent obtained by duress as affecting tortious act, see "Torts," § 17.

Consent to sexual intercourse obtained by duress, see "Rape," § 11.

Duress affecting validity of agreements, contracts, or conveyances, see "Assignments," § 64; "Bills and Notes," §§ 104, 374, 438; "Carriers," § 218; "Chattel Mortgages," § 72; "Compromise and Settlement," § 8; "Contracts," § 95;

\*Annotation: Words and Phrases, same title.

"Deeds," § 71; "Guaranty," § 20; "Homestead," § 118; "Insurance," § 603; "Landlord and Tenant," §§ 27, 231; "Marriage," § 35; "Mortgages," § 79; "Principal and Surety," § 43; "Release," § 18; "Trusts," § 50.

Duress as ground for divorce, see "Divorce," § 18.

Duress in securing removal of municipal officer, see "Municipal Corporations," § 159.

Element of damages, see "Damages," § 52.

Frightening animals as actionable wrong, see "Torts," § 7.

Frightening animals at railroad crossing, see "Railroads," § 305.

Frightening animals by blasting, see "Explosives," § 12.

Frightening animals by defects in property abutting highway, see "Negligence," § 35.

Frightening animals causing injuries, see "Mines and Minerals," § 118.

Frightening animals in street causing injuries, see "Municipal Corporations," § 705.

Frightening animals near railroad tracks, see "Railroads," §§ 360, 407; "Street Railroads," § 87.

Frightening animals on highway, see "Highways," § 181.

Frightening animals on street, see "Municipal Corporations," § 781.

Limitation of actions for relief on ground of duress, see "Limitation of Actions," § 97.

Payment of judgment under duress as waiving right of review, see "Appeal and Error," § 158.

Pleading duress as ground for cancellation of instrument, see "Cancellation of Instruments," § 37.

Pleading facts or conclusions as to duress, see "Pleading," § 8.

Recovery of fine extorted by duress, see "Fines," § 19.

Recovery of payments made under duress, see "Payment," § 87.

Robbery by putting in fear, see "Robbery," § 7.

Trespass for injuries resulting from frightening animals, see "Trespass," § 1.

### FRIVOLOUS ACTION.

#### *Cross-Reference.*

See "Action," § 8.

### FRIVOLOUS APPEAL.

#### *Cross-References.*

As ground for denying certificate of probable cause, see "Criminal Law," § 1073.

Damages and penalties, see "Costs," §§ 260-263.

Dismissal, see "Appeal and Error," § 786.

Time for hearing, see "Appeal and Error," § 817.

### FRIVOLOUS PLEADING.\*

#### *Cross-References.*

Ground for judgment on pleadings, see "Pleading," § 346.

Ground for striking out, see "Pleading," § 358.

### FROGS.\*

#### *Cross-Reference.*

Liability of master for injury to servant from defects, see "Master and Servant," § 111.

### FRONTAGE TAX.

#### *Cross-Reference.*

Assessments for public improvements, see "Municipal Corporations," §§ 469, 470.

### FRONT-FOOT RULE.\*

#### *Cross-Reference.*

Apportionment of expenses of public improvements, see "Municipal Corporations," §§ 469, 470.

### FRUCTUS INDUSTRIALES.\*

#### *Cross-Reference.*

See "Crops."

### FRUIT.\*

#### *Cross-References.*

See "Crops."

Appointment of inspectors of fruit trees, see "Agriculture," § 1.

Assignability of contract for planting and care of orchard, see "Assignments," § 19.

Destruction of insects injurious to trees, see "Agriculture," § 9.

Storage, see "Warehousemen."

### FRUIT TREES.

#### *Cross-References.*

Evidence of damages in action for injury, see "Damages," § 174.

Liability of landlord for improperly trimming trees, see "Landlord and Tenant," § 141.

### FUEL YARDS.

#### *Cross-Reference.*

Establishment by city, see "Municipal Corporations," § 861.

### FUERO.\*

#### *Cross-Reference.*

See "Customs and Usages."

### FUGITIVE.

#### *Cross-References.*

Runaway apprentices, see "Apprentices," §§ 21, 22.

Runaway slaves, see "Slaves," § 9.

### FUGITIVE FROM JUSTICE.\*

#### *Cross-References.*

Absence of fugitive witness as ground for continuance, see "Criminal Law," § 594.

Absence of ground for continuance, see "Criminal Law," § 614.

\*Annotation: Words and Phrases, same title.



Continuance to obtain evidence of, see "Criminal Law," § 594.  
 Diligence in procuring fugitive witness as affecting right to continuance, see "Criminal Law," § 598.  
 Effect of codefendant being fugitive from justice on right to continuance of prosecution against defendant, see "Criminal Law," § 589.  
 Extradition, see "Extradition," § 30.  
 Ground for dismissal of appeal, see "Criminal Law," § 1131.  
 Presumption of death from absence, see "Death," § 2.  
 Right of accused, fleeing from justice, to continuance, see "Criminal Law," § 598.  
 Right to discharge for delay in prosecution, see "Criminal Law," § 576.  
 Suspension of limitation of prosecution, see "Criminal Law," § 153.

### **FULL AGE.\***

#### *Cross-Reference.*

Age of majority, see "Infants," § 1.

### **FULL BLOOD.**

#### *Cross-References.*

As determining right of inheritance, see "Descent and Distribution," §§ 20-51.  
 As determining rights under will, see "Wills," § 497.

### **FULL COURT.**

#### *Cross-References.*

Decision on appeal by divided court, see "Appeal and Error," § 1123.  
 Number of judges concurring in adjudication, see "Courts," § 102.  
 Quorum or number of judges necessary to adjudication, see "Courts," § 101.

### **FULL CREW ACT.**

#### *Cross-References.*

See "Commerce," § 58; "Injunction," § 85; "Railroads," § 230; "Statutes," § 113.

### **FUNDAMENTAL QUESTIONS.**

#### *Cross-Reference.*

Certification, see "Appeal and Error," § 308.

### **FULL FAITH AND CREDIT.\***

#### *Cross-References.*

Probate of foreign wills, see "Wills," § 242.  
 Record of probate of foreign will, see "Wills," § 434.  
 To judgments of other states in general, see "Judgment," §§ 814-827.

### **FUNDING.\***

#### *Cross-References.*

Indebtedness, see "Municipal Corporations," § 913; "Schools and School Districts," § 97; "Towns," § 52.

### **FUNDS.\***

#### *Cross-References.*

See "Depositories."  
 Assets of insolvent corporation as trust fund, see "Corporations," § 544.  
 Deposited in bank after insolvency, see "Banks and Banking," § 75.  
 Deposits in bank or trust company in general, see "Banks and Banking," §§ 119-155, 263-267, 298-301, 315.  
 Disposition of taxes collected, see "Highways," § 130; "Intoxicating Liquors," § 95; "Licenses," § 33; "Municipal Corporations," §§ 985, 986; "Taxation," §§ 906½-917.  
 Finality of order allowing clerk a commission on funds in court, see "Appeal and Error," §§ 70, 73.  
 For maintenance of militia, see "Militia," § 4.  
 Guaranty funds of insurance companies, see "Insurance," §§ 8, 21, 37, 58, 698, 710.  
 In litigation, interest on, see "Interest," § 20.  
 Medium of payment, see "Payment," §§ 9-14.  
 Of beneficial association, see "Beneficial Associations," § 17.  
 Of club, see "Clubs," § 3.  
 Of college or university, see "Colleges and Universities," § 6.  
 Of corporation, rights and liabilities of officers and agents, see "Corporations," § 312.  
 Of corporation, rights and liabilities of stockholders, see "Corporations," § 182.  
 Of joint-stock company, see "Joint Stock Companies," § 14.  
 Of religious society, see "Religious Societies," §§ 15½-25.  
 Of unincorporated association, see "Associations," § 15.  
 Pension fund for teachers, see "Schools and School Districts," § 146.  
 Proceeds of dispensaries, see "Intoxicating Liquors," § 128.  
 Public funds in general, see "Counties," §§ 94, 149-196; "District of Columbia," §§ 32, 33; "Levees," §§ 31-34; "Municipal Corporations," §§ 172, 858-1000; "Officers," § 111; "Schools and School Districts," §§ 17-19; "States," §§ 75, 113-168½; "Territories," § 29; "Towns," §§ 46-61; "United States," §§ 79-91.  
 Regulation of public funds by special or local laws, see "Statutes," § 95.  
 Review of order distributing funds, nature of order appealed from, see "Appeal and Error," § 875.  
 Trust funds deposited in bank, see "Banks and Banking," §§ 80, 130.  
 Trust funds in general, see "Trusts."  
 Vested rights in disposition of public funds, see "Constitutional Law," § 103.

### **FUNERAL BENEFITS.**

#### *Cross-Reference.*

See "Beneficial Associations," § 18.

\*Annotation: Words and Phrases, same title.

**FUNERAL DIRECTORS.***Cross-Reference.*

Associations, see "Associations," § 5.

**FUNERAL EXPENSES.\****Cross-References.*

As included in bequest of income, see "Wills," § 573.

Concurrent actions for funeral expenses and sick benefits, see "Abatement and Revival," § 8.

Expenditures by executor or administrator, see "Executors and Administrators," § 109.

Joinder by husband and minor child in action for funeral expenses paid by the husband and damages accruing to the child, see "Action," § 50.

Liability for expenses of burial, see "Dead Bodies," § 6.

Liability for funeral expenses of paupers, see "Paupers," § 49.

Liability of estate of decedent, see "Executors and Administrators," § 214.

Liability of husband for funeral expenses of wife, see "Husband and Wife," § 19.

Of bastard child, see "Bastards," § 78.

Of members of beneficial associations, see "Beneficial Associations."

**FUNERALS.\****Cross-References.*

See "Cemeteries"; "Dead Bodies."

Right of way over street railroad tracks, see "Street Railroads," § 85.

**FURNITURE.\****Cross-References.*

Equipment of ship within warranty of seaworthiness, see "Insurance," § 273.

Exemption from legal process, see "Exemptions," § 42.

Fixtures, see "Fixtures."

For schools, see "Schools and School Districts," § 75.

Property covered by insurance, see "Insurance," § 163.

Subject to chattel mortgage, see "Chattel Mortgages," § 119.

**FURTHER APPEAL.***Cross-References.*

Allowance after remand of cause, see "Appeal and Error," § 1220.

From intermediate court to court of last resort, see "Appeal and Error," §§ 43, 44, 64, 65, 84, 120, 178, 228, 271, 483, 512, 711, 1080-1095, 1233.

Liability of sureties on appeal bond, see "Appeal and Error," § 1233.

Reciprocal rights of sureties on bonds given on successive appeals, see "Appeal and Error," § 1227.

To same or co-ordinate court, see "Appeal and Error," §§ 14, 391, 483, 513, 514, 1096-1099.

**FURTHER ASSURANCE.\****Cross-Reference.*

Covenants for, see "Covenants," §§ 44, 66, 98.

**FURTHER HEARING.***Cross-References.*

New trial, see "Criminal Law," §§ 905-965; "New Trial."

New trial or rehearing on preliminary examination of person charged with crime, see "Criminal Law," § 237.

Rehearing in equity, see "Equity," § 392.

Rehearing in proceedings for review, see "Appeal and Error," §§ 829-835; "Certiorari," § 62; "Criminal Law," § 1133.

**FUTURE ADVANCES.***Cross-References.*

Consideration for conveyance, sufficiency as to creditors, see "Fraudulent Conveyances," § 81.

Mortgage to secure, see "Chattel Mortgages," §§ 22, 110; "Mortgages," §§ 16, 116.

**FUTURE EARNINGS \****Cross-Reference.*

Equitable assignment of portion of money to be earned, see "Assignments," § 48.

**FUTURE ESTATES.\****Cross-References.*

Assignability, see "Assignments," §§ 6-9.

Creation by deed, see "Deeds," §§ 130-133.

Creation by will, see "Wills," §§ 622-638.

In general, see "Curtesy"; "Dower"; "Estates"; "Remainders"; "Reversions."

Restrictions on creation, see "Perpetuities."

**FUTURES.\****Cross-References.*

Purchases or sales for future delivery by or through brokers, see "Brokers."

Sales for future delivery, see "Gaming," § 12.

Speculation in futures on board of trade as affecting property rights in price quotations, see "Exchanges," § 13.

**GAGE.***Cross-References.*

See "Pawnbrokers"; "Pledges."

**GAMBLING.\****Cross-Reference.*

See "Gaming."

\*Annotation: Words and Phrases, same title.

## G A M E.\*

*Scope-Note.*

[INCLUDES wild animals pursued for sport or profit; regulations for their preservation; and nature and incidents of rights of taking game.

[EXCLUDES regulations relating to animals in general, and the offense of cruelty to animals (see "*Animals*") ; and hunting on Sunday (see "*Sunday*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Right to take game and nature of property therein.
- § 2. What is game.
- § 2½. Game on public lands or waters.
- § 3. Private rights of taking game.
- § 3½. Power to protect and regulate.
- § 4. Constitutional and statutory provisions.
- § 5. Licenses.
- § 6. Game wardens and other officers.
- § 7. Offenses.
- § 8. Penalties for violations of regulations.
- § 9. Criminal prosecutions.
- § 10. Searches and seizures.

*Cross-References.*

See "Fish."

Amount of damages for trespass, see "Trespass," § 57.

Applicability of game laws to Indian reservations, see "Indians," § 32.

Commingle game unlawfully killed with other game, burden of proof as to ownership, see "Confusion of Goods," § 13.

Commission of offense on Indian reservation, see "Indians," § 38.

Constitutionality of act prohibiting possession of game at certain times, taking property without compensation, see "Eminent Domain," § 2.

Constitutionality of act prohibiting possession of game birds, violation of privileges and immunities, see "Constitutional Law," § 206.

Constitutionality of act prohibiting sale of game, impairing obligation of contract, see "Constitutional Law," § 165.

Constitutionality of act prohibiting sale of game, retroactive operation, see "Constitutional Law," § 190.

Constitutionality of act prohibiting sale of quail, interference with right of acquiring property, see "Constitutional Law," § 87.

Constitutionality of act prohibiting transportation of game from county, class legislation, see "Constitutional Law," § 208.

Constitutionality of act requiring nonresident to obtain license for privilege of hunting, infringing privileges and immunities of citizens of the several states, see "Constitutional Law," § 207.

Constitutionality of laws for the protection of game, taking property without due process of law, see "Constitutional Law," § 278.

Constitutionality of ordinance making it a misdemeanor to transport game from county, interference with right of private property, see "Constitutional Law," § 87.

Constitutionality of statutes, due process of law, see "Constitutional Law," § 319.

Constitutionality of statutes, equal protection of laws, see "Constitutional Law," § 236.

Constitutionality of statutes, special legislation, see "Statutes," § 77.

Constitutionality of statutes, subjects and titles, see "Statutes," § 110½.

Disposition of proceeds of fines, see "Schools and School Districts," § 17.

Forgery of fish net destruction bounty certificates, see "Forgery," §§ 8, 12, 18.

Form of action for trespass, see "Trespass," § 18.

Game as subject of commerce, see "Commerce," § 15.

\*Annotation: Words and Phrases, same title.

Hunting on land of another as trespass, see "Trespass," § 10.  
 Hunting on Sunday, see "Sunday," §§ 2, 3, 28.  
 Killing doves as trespass, see "Trespass," § 7.  
 Liability of carrier on seizure of game unlawfully killed, see "Carriers," § 75.  
 License to hunt game as defense in trespass,

see "Trespass," § 25.  
 Power to define offense irrespective of intent, see "Criminal Law," § 21.  
 Property in animals in general, see "Animals," § 2.  
 Right to hunt as incident to right of navigation, see "Navigable Waters," § 29.  
 Validity of contract to store game during closed season, see "Warehousemen," § 10.

§§ 1-21½. (See Analysis.)

### § 3. Private rights of taking game.

#### Cross-Reference.

See post, § 4.

#### Annotation.

Nature and extent of right created by private grant of hunting or fishing privilege.—40 L. R. A. (N. S.) 299, note.

(a) The Legislature may, as in act 1898, c. 206, applicable to Baltimore city, in the exercise of its police power, and as a means of protecting game, prohibit any persons from having game in their possession, or exposing it for sale, in original packages or otherwise, during certain seasons of the year, whether such game was killed or caught in Maryland or any other state.—*Stevens v. State*, 89 Md. 669, 43 Atl. 929. (See Code, art. 99, § 26.) [Cited and annotated in 3 L. R. A. (N. S.) 163, on prohibition of possession of game.]

### § 3½. Power to protect and regulate.

### § 4. Constitutional and statutory provisions.

#### Cross-References.

See ante, § 3; post, §§ 5, 9.  
 Act prohibiting sale of quail as interference with right of acquiring property, see "Constitutional Law," § 87.  
 Class legislation, see "Constitutional Law," § 208.  
 Denial of equal protection of laws, see "Constitutional Law," § 236.  
 Due process of law, see "Constitutional Law," § 319.  
 Effect of partial invalidity of statutes, see "Statutes," § 64.  
 General or local nature of laws, see "Statutes," § 77.  
 Impairing obligation of contract, see "Constitutional Law," § 165.  
 Prohibiting transportation of game as interference with private rights of property, see "Constitutional Law," § 87.  
 Retroactive laws, see "Constitutional Law," § 190.  
 Sufficiency of title of act, see "Statutes," § 110½.  
 Taking property without compensation, see "Eminent Domain," § 2.  
 Taking property without due process of law, see "Constitutional Law," § 278.

Violation of privileges and immunities, see "Constitutional Law," §§ 206, 207.

#### Annotation.

See Code, art. 99, §§ 1, et seq.

### § 5. Licenses.

(a) Plaintiff applied for a license to place a shooting blind off "Round Point," in "South river," at the place occupied the preceding year under license by a person since deceased. The license was issued, conferring on plaintiff general authority to place one blind "off Round Point in the waters of South river." A similar license was issued to defendant to place a blind at the same place as described in plaintiff's license. The local law of Anne Arundel county provides, in § 254, that, before any person shall place any blind in the waters of South river and shoot therefrom, he shall obtain a license therefor, and in § 255 that, "after said blind has been licensed," no blind shall be established nearer than 300 yards therefrom. Held, that, until plaintiff had first established his blind, he had no superior right to any particular spot off such point, so as to support a bill to restrain defendant from establishing a blind.—*Bannon v. Shekell*, 94 Md. 738, 51 Atl. 836.

§§ 6-8. (See Analysis.)

### § 9. Criminal prosecutions.

#### Cross-References.

Application and affidavits for continuance, see "Criminal Law," § 603.  
 Cruel and unusual punishment, see "Criminal Law," §§ 1213, 1214.  
 Declarations as evidence, see "Criminal Law," § 417.  
 Definition of terms in instructions, see "Criminal Law," § 800.  
 Disposition of proceeds of fines, see "Fines," § 20.  
 Estoppel to allege error, see "Criminal Law," § 1137.  
 Evidence in action for false imprisonment, see "False Imprisonment," § 26.  
 Hunting on Sunday, see "Sunday," § 28.  
 Indictment, duplicity, see "Indictment and Information," § 125.

Instructions as to sufficiency of evidence, see "Criminal Law," § 789.

Instructions, requests for, see "Criminal Law," § 834.

Jurisdiction, see "Criminal Law," §§ 84, 90, 94.

Jurisdiction of justices of the peace, see "Justices of the Peace," § 40.

Summary jurisdiction, see "Criminal Law," § 250.

(a) An indictment which charged that defendant on October 26, 1894, had in his possession 96 rabbits, contrary to the form, etc., was good, under Code 1888, art. 99, § 13, as amended by act 1894, c. 404, providing that no person shall catch, kill, or have in his possession any rabbit between December 24th and November 1st next ensuing.—*Dickhaut*

*v. State*, 85 Md. 451, 37 Atl. 21, 36 L. R. A. 765, 60 Am. St. Rep. 332. (See Code 1911, art. 99, §§ 20, 26.) [Cited and annotated in 3 L. R. A. (N. S.) 165, on prohibition of possession of game.]

## § 10. Searches and Seizures.

### Cross-Reference.

Deprivation of property without due process of law, see "Constitutional Law," § 319.

## GAMES.\*

### Cross-References.

As nuisance, see "Nuisance," § 3.

Playing in street, see "Municipal Corporations," § 703.

Sunday sports and amusements, see "Sunday," § 6.

## GAMING.\*

### Scope-Note.

[INCLUDES wagers and other agreements to risk money or other property on the result of a contest or the happening of any uncertain event; nature, requisites, validity, incidents, construction, operation, and effect of such agreements in general; rights, liabilities, and remedies of the parties; and unlawfully betting, playing games, keeping or frequenting houses or other places for gaming, as public offenses, and liability therefor, civil and criminal.

[EXCLUDES wager policies of insurance (see "Insurance"); lotteries (see "Lotteries"); and gambling on Sunday (see "Sunday").

[For complete list of matters excluded, see cross-references, post.]

### Analysis.

## I. Gambling Contracts and Transactions.

### (A) NATURE AND VALIDITY.

- § 1. Wagers in general.
- § 2. What law governs.
- § 3. Constitutional and statutory provisions.
- § 4. Licenses.
- § 5. Subject-matter and interest of parties therein in general.
- § 6. Games, sports, and contests.
- § 7. Prizes or premiums.
- § 8. Subscriptions or entrance fees.
- § 9. Disposition of money or property by chance.
- § 10. Speculative transactions and dealings.
- § 11. — In general.
- § 12. — Sales for future delivery.
- § 13. — Options.
- § 14. — Agreements for payment of differences.
- § 15. — Bets on rise or fall of prices.
- § 16. Cheating or fraudulent practices.

\*Annotation: Words and Phrases, same title.

**I. Gambling Contracts and Transactions—Continued.****(A) NATURE AND VALIDITY— Continued.**

- § 17. Contracts in furtherance of gaming in general.
- § 18. Loans for gambling purposes.
- § 19. Obligations and securities for gambling considerations.
- § 20. Conveyances for gambling considerations.
- § 21. Loans to pay losses.

**(B) RIGHTS AND REMEDIES OF PARTIES.**

- § 22. Parties to bet or game.
- § 23. — In general.
- § 24. — Withdrawal or repudiation.
- § 25. — Enforcement of contract.
- § 26. — Recovery of payments.
- § 27. Stakeholders.
- § 28. — Rights and liabilities in general.
- § 29. — Effect of withdrawal or repudiation of bet.
- § 30. Agents for purpose of betting or gambling.
- § 31. Parties to speculative transactions.
- § 32. — Enforcement of contract in general.
- § 33. — Recovery of property or proceeds.
- § 34. — Recovery of payments.
- § 35. Brokers in speculative transactions.
- § 36. — Rights and liabilities in general.
- § 37. — Margins and other deposits.
- § 38. — Commissions.
- § 39. Summary remedies.
- § 40. Actions.
- § 41. — Nature and form of remedy.
- § 42. — Grounds of action.
- § 43. — Defenses.
- § 44. — Jurisdiction and venue.
- § 45. — Time to sue, and limitations.
- § 46. — Parties.
- § 47. — Process and appearance.
- § 48. — Pleading.
- § 49. — Evidence.
- § 50. — Trial, judgment, and review.

**II. Penalties and Forfeitures.**

- § 51. Nature and scope in general.
- § 52. Constitutional and statutory provisions.
- § 53. Grounds of penalties.
- § 54. Amount of penalties.
- § 55. Persons who may enforce penalties.
- § 56. Persons liable for penalties.
- § 57. Actions for penalties.
- § 58. Property subject to forfeiture.
- § 59. Grounds of forfeitures.
- § 60. Searches and seizures.
- § 61. Enforcement and effect of forfeitures.

**III. Criminal Responsibility.****(A) OFFENSES.**

- § 62. Nature of offense of gaming.
- § 63. Constitutional and statutory provisions.
- § 64. Elements of criminal gaming.
- § 65. — Intent.
- § 66. — Game, event, or hazard.
- § 67. — Bet or stake.
- § 68. Games, sports, and devices prohibited.
- § 69. Speculative transactions and dealings.
- § 70. Playing or betting.
- § 71. — In general.
- § 72. — Public place, house, or resort.
- § 73. Bookmaking or pool selling.
- § 74. Keeping or exhibiting gaming table, device, or implements.
- § 75. Keeping gaming house or place for betting or gaming.
- § 76. Owning or letting or permitting use of house or place for gaming.
- § 77. Frequenting or visiting gaming houses or places for betting or gaming.
- § 78. Common gamblers.
- § 79. Persons liable.
- § 80. Distinct offenses in one act.
- § 81. Continuing or separate offenses.

**(B) PROSECUTION AND PUNISHMENT.**

- § 82. Jurisdiction.
- § 83. Preliminary proceedings in prosecution.
- § 84. Indictment or information.
- § 85. — Requisites and sufficiency in general.
- § 86. — Intent.
- § 87. — Description of game, device, or implements.
- § 88. — Description of bet or stake.
- § 89. — Description of place or house.
- § 90. — Keeping or exhibiting table, device, or implements.
- § 91. — Keeping house or place.
- § 92. — Ownership and use of house or place.
- § 93. — Frequenting or visiting house or place.
- § 94. — Issues, proof, and variance.
- § 95. Evidence.
- § 96. — Presumptions and burden of proof.
- § 97. — Admissibility.
- § 98. — Weight and sufficiency.
- § 99. Trial.
- § 100. — Conduct in general.
- § 101. — Questions for jury.
- § 102. — Instructions.
- § 103. — Verdict.
- § 104. New trial.
- § 105. Appeal and error.
- § 106. Sentence and punishment.

*Cross-References.*

- See "Lotteries."
- Act avoiding contracts for sales of stock on margin as interfering with right of contract, see "Constitutional Law," § 89.
- Assignment of right to recover money deposited on a wager, see "Assignments," § 26.
- At fair grounds, see "Agriculture," § 5.
- Betting on election as violation of election law, see "Elections," § 315.
- Breach of liquor dealer's bond, see "Intoxicating Liquors," § 86.
- Broker as constructive trustee of owner of margins, see "Trusts," § 95.
- Destruction of property used in gaming as deprivation of property without due process of law, see "Constitutional Law," § 320.
- Enforcement of penalty or forfeiture as deprivation of property without due process of law, see "Constitutional Law," § 203.
- Equitable relief against judgment based on gaming transaction, see "Judgment," § 416.
- Estoppel by representation, as to validity of obligation for gambling consideration, see "Estoppel," § 86.
- Forbidding recovery of property lost in speculative transactions as deprivation of property without due process of law, see "Constitutional Law," § 277.
- Gambling as ground for discharge of servant, see "Master and Servant," § 30.
- Gambling consideration as affecting rights of bona fide holder of bill or note, see "Bills and Notes," § 375.
- Gambling house as public nuisance, see "Nuisance," § 62.
- Illegality of transactions affecting provability of claims against bankrupt's estate, see "Bankruptcy," § 314.
- Imputation of crime as slanderous, see "Libel and Slander," § 7.
- Interstate commerce clause of Constitution as affecting right to punish gambling, see "Commerce," § 40.
- Judicial notice of games, see "Criminal Law," § 304.
- Law prohibiting selling of pools on races outside state as granting special rights and privileges, see "Constitutional Law," § 205.
- Law providing for destruction of gambling devices as delegation of judicial authority to municipal authorities, see "Constitutional Law," § 80.
- Laws relating to particular localities, as class legislation, see "Constitutional Law," § 208.
- Liability of telegraph company for error in or failure to deliver message relating to deals in futures, see "Telegraphs and Telephones," § 42.
- Mandamus to officer to compel closing of gaming house, see "Mandamus," § 3.
- On Sunday, see "Sunday," § 6.
- Persons entitled to question constitutionality of act allowing creditors of loser to recover money of winner, see "Constitutional Law," § 42.
- Persons living by gambling as vagrants, see "Vagrancy," § 2.
- Pool selling as subject of regulation, see "Commerce," §§ 43, 44.
- Powers of racing association, see "Corporations," § 374.
- Private action for abatement of gambling house as public nuisance, see "Nuisance," § 75.
- Procuring money by inducing wagers by false representations as larceny, see "Larceny," § 14.
- Prohibiting gambling in room where liquors were sold, see "Intoxicating Liquors," § 132.
- Prohibiting transmission of telegraphic messages to pool rooms as regulation of interstate commerce, see "Commerce," § 59.
- Prohibition against options to buy or sell commodities as infringing liberty of contract, see "Constitutional Law," § 89.
- Property rights in quotations of prices by board of trade notwithstanding gambling transactions, see "Exchanges," § 13.
- Punishment of proprietors of games and immunity to patrons as class legislation, see "Constitutional Law," § 208.
- Receipt by bank of deposit of money won in gaming, see "Banks and Banking," § 100.
- Recovery of money paid for lottery tickets, see "Lotteries," § 15.
- Release of cause of action to recover property lost in speculative transactions, see "Release," §§ 2, 33.
- Rescission of horse trade based on gambling transaction, see "Exchange of Property," § 11.
- Restraining gambling, see "Injunction," § 102.
- Restraining gambling as nuisance, see "Nuisance," § 6.
- Rights of informers to fines in prosecution for carrying on policy game, see "Fines," § 21.
- Right to interest on property wagered, see "Interest," § 39.
- Right to recover money paid on wagering contract as vested right, see "Constitutional Law," § 105.
- Robbery by gamblers, see "Robbery," § 4.
- Seizure of gaming tables as deprivation of property without due process of law, see "Constitutional Law," § 319.
- Slot machine as gaming device and lottery, see "Criminal Law," § 29.
- Strict construction of statute restricting horse racing, see "Statutes," § 241.
- Testamentary direction to pay debts as including gaming debt, see "Executors and Administrators," § 202.
- Use of mails to defraud, see "Post Office," § 35.
- Validity of agreement to divide gains made subsequent to gambling transaction, see "Contracts," § 140.
- Validity of lease for gaming purposes, see "Landlord and Tenant," § 29.
- Validity of ordinance prohibiting telegraph company from furnishing information as



to horse races to pool room, see "Telegraphs and Telephones," § 29.  
 Violation of gaming laws as ground for removal of municipal officer, see "Municipal Corporations," § 156.  
 Wager by juror on result of trial as ground

for new trial, see "Criminal Law," § 925.  
 Wagering policies of insurance, see "Insurance," § 119.  
 Wager of prosecuting witness on result of case as ground for new trial, see "Criminal Law," § 913.

## I. GAMBLING CONTRACTS AND TRANSACTIONS.

### Cross-Reference.

Contracts and transactions connected with lotteries, see "Lotteries," § 12.

### (A) NATURE AND VALIDITY.

### Cross-References.

Agreement to divide winnings as subsequent and valid, see "Contracts," § 140.  
 Property rights in quotations of prices by board of trade notwithstanding gambling transactions, see "Exchanges," § 13.

### § 1. Wagers in general.

### § 2. What law governs.

#### Annotation.

Conflict of laws as to gambling and lottery contracts.—64 L. R. A. 160; 46 L. R. A. (N. S.) 650, notes.

(a) A note given in Maryland in consideration of money loaned for "making books" on races run in another state, where the laws authorize "bookmaking," is given for money loaned for gambling purposes, and is void.—*Spies v. Rosenstock*, 87 Md. 14, 39 Atl. 268; *Same v. Stargardtner*, Id. [Cited and annotated in 23 L. R. A. (N. S.) 479, on accounting between members of illegal or void partnership or one engaged in illegal business; in 46 L. R. A. (N. S.) 653, on conflict of laws as to gambling contracts.]

### § 3. Constitutional and statutory provisions.

#### Cross-References.

Criminal responsibility, see post, § 63.  
 Concurrence of separate branches of legislature as affecting validity, see "Statutes," § 23.  
 Effect of partial invalidity of statute, see "Statutes," § 64.  
 Identification of act amended, see "Statutes," § 138.  
 Implied repeal by revision, see "Statutes," § 167.  
 Subject and title of act, see "Statutes," § 118.

#### Annotation.

See Code [vol. 3], art. 27, §§ 214, et seq.

(a) Act 1813, c. 84, does not repeal, either expressly or by necessary implication, St. 9 Anne, c. 14, avoiding securities for gambling

considerations, which has been adopted.—*Gough v. Pratt*, 9 Md. 526. (See Code [vol. 3], art. 27, § 224; Alex. Brit. Stat. [Coe's ed.] 932.) [Cited and annotated in 31 L. R. A. 760, on injunction against judgments for defenses existing prior to rendition; in 48 L. R. A. 846, 847, on injunction, in favor of party in *pari delicto*, against enforcing illegal contract.]

(b) A court of equity will restrain an innocent bona fide assignee for value of a security given for money lost in gaming from enforcing his claim, under a statute rendering security thus given void, even upon a judgment already obtained.—*Gough v. Pratt*, 9 Md. 526. (See Code [vol. 3], art. 27, § 224.) [Cited and annotated, see supra.]

### § 4. Licenses.

#### Cross-References.

Concurrent and conflicting regulations as between state and municipality, see "Municipal Corporations," § 592.  
 Conflicting regulations by state and city, see "Municipal Corporations," § 592.  
 Delegation to city of power of state to regulate, see "Municipal Corporations," § 590.  
 License to conduct faro game as contract right, see "Constitutional Law," § 136.  
 Power of city to regulate, see "Municipal Corporations," § 594.  
 Power of municipality to license gaming houses, see "Licenses," § 6.  
 Restraining acts under license procured by fraud, see "Injunction," § 89.

### § 5. Subject-matter and interest of parties therein in general.

#### Cross-Reference.

See post, § 6.

### § 6. Games, sports, and contests.

(a) A wager on the election of a sheriff, made between persons resident in the county and voters at the election, is against sound policy, and ought not to be sanctioned by a court of justice.—*Wroth v. Johnson*, 4 H. & McH. 284.

### §§ 7-9. (See Analysis.)

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

## § 10. Speculative transactions and dealings.

### Cross-References.

Criminal responsibility, see post, § 69.

Rights and liabilities of brokers, see post, §§ 36-38.

Rights and remedies of parties, see post, §§ 31-34.

Liability of telegraph company for failure to deliver message relating to deals in futures, see "Telegraphs and Telephones," § 42.

Liability of telegraph company for error in transmission of message relating to deals in futures, see "Telegraphs and Telephones," § 42.

## § 11.— In general.

### Cross-Reference.

See post, § 14.

(a) A contract which is in fact a gambling contract is not rendered valid by being clothed in legal form, as the court will look through the form of the contract and will declare its true nature.—*Richter v. Poe*, 109 Md. 20, 71 Atl. 420.

(b) A speculative contract for the purchase and sale of stocks on margin is valid, where the broker undertakes at once to buy the stock selected, and agrees to advance the money required beyond the per cent. furnished by the customer, and carry or hold the stock for the benefit of the customer so long as the margin agreed on is kept good, or until notice is given by either party that the transaction must be closed, and agrees at all times to have in his name and under his control, and ready for delivery, the shares purchased, or an equal amount of other shares of the same stock, and deliver such shares to the customer when required by him on receipt of advances, commissions, and interest, or sell such shares on the order of the customer on payment of the sums due him and account to the customer for the proceeds of such sale, and the customer undertakes to pay the margin agreed upon, and keep it good according to the fluctuations of the market, and take the shares whenever required by the broker, and pay the difference between the percentage advanced by him and the amount due the broker.—*Richter v. Poe*, 109 Md. 20, 71 Atl. 420.

(c) A contract by a corporation to sell a certain quantity of bonds, which it had ob-

tained the right to buy, to various subscribers to the agreement at a certain price, reserving to the corporation, however, the right to sell all or any of the bonds on account of the subscribers at a higher price than the subscribers were bound to pay, provided its option was exercised before a certain time, which contract was executed by the actual delivery of the bonds to all but one of the subscribers, was not a gambling contract.—*Nes v. Union Trust Co.*, 104 Md. 15. 64 Atl. 310.

(d) A purchase or sale in the stock market on margins is a gambling contract, and no action can be maintained thereon.—*Cover v. Smith*, 82 Md. 586, 34 Atl. 465. [Cited and annotated in 11 L. R. A. (N. S.) 575, on broker's right to commissions or advances in furthering wagering contract.]

(e) A contract to sell gold short, deliverable at a future day, like a contract for a similar sale of stock, is not illegal.—*Appleman v. Fisher*, 34 Md. 540.

(f) A speculating contract as to the price of stock is not a wager inconsistent with the policy of the law, and therefore is not void under act 1813, c. 84.—*Ridgely v. Riggs*, 4 H. & J. 358. (See Code [vol. 3], art. 27, § 224.)

## § 12.— Sales for future delivery.

(a) A contract for the sale of goods to be delivered at a future day is valid, even though the seller has not got the goods nor any other means of getting them than to go into the market and buy them; but such contract is only valid when the parties really intend a delivery by the seller and payment of the price by the buyer. And if the real intent be merely to speculate in the rise and fall of prices, and the goods are not to be delivered, but the difference is to be paid between the contract and market price at the date for executing the contract, then the transaction is nothing more than a wager.—*Richter v. Poe*, 109 Md. 20, 71 Atl. 420.

## § 13.— Options.

### Cross-References.

Agent or principal in option transactions, see "Principal and Agent," § 3.

To purchase stock on death of owner, see "Corporations," § 116.

#### § 14.—Agreements for payment of differences.

##### Cross-Reference.

See ante, § 11.

(a) A contract whereby a so-called purchaser of stock, in case of a decline in the market price, is to pay the difference between the contract price and the market price, with no intention that he shall receive and pay for the stock itself is a gambling contract, and no action can be maintained upon it.—*Richter v. Poe*, 109 Md. 20, 71 Atl. 420.

(b) Contracts of sale that do not contemplate the actual bona fide delivery of the property by the seller, nor the payment by the buyer, but are intended to be settled by paying the difference in price at some future time, are gambling contracts.—*Billingslea v. Smith*, 77 Md. 504, 26 Atl. 1077.

(c) Where it is not the intention of either the principal or his broker that there should be an actual delivery of the wheat purchased on account of the principal, but it is their mutual intention that the difference between the cost of such wheat and the amount realized from the sale of the same shall be settled by money, then the contract between them is a gambling contract; and the principal cannot, on a breach of the alleged contract, recover the money paid the broker.—*Burt v. Myer*, 71 Md. 467, 18 Atl. 796.

#### § 15.—Bets on rise or fall of prices.

#### § 16. Cheating or fraudulent practices.

#### § 17. Contracts in furtherance of gaming in general.

##### Cross-Reference.

Validity of lease for gaming purposes, see "Landlord and Tenant," § 29.

#### § 18. Loans for gambling purposes.

(a) By St. 9 Anne, c. 14, which is in force in Maryland, a note, together with a judgment recovered thereon, is void, when a part of the consideration was for money loaned for gambling purposes, and execution will be enjoined.—*Emerson v. Townsend*, 73 Md. 224, 20 Atl. 984. (See Alex. Brit. Stat. [Coe's ed.] 932.) [Cited and annotated in 31 L. R. A. 759, on injunction against judgments for defenses existing prior to ren-

tion; in 48 L. R. A. 847, on injunction, in favor of party in pari delicto, against enforcing illegal contract.]

#### § 19. Obligations and securities for gambling considerations.

##### Cross-References.

Defense against bona fide holder of bill or note, see "Bills and Notes," § 375.

Estoppel by representations as to validity, see "Estoppel," § 86.

#### § 20. Conveyances for gambling considerations.

#### § 21. Loans to pay losses.

##### (B) RIGHTS AND REMEDIES OF PARTIES.

##### Cross-References.

Assignment of right to recover money deposited on a wager, see "Assignments," § 26.

Broker as constructive trustee of owner of margins, see "Trusts," § 95.

Illegality of transactions affecting provability of claims against bankrupt's estate, see "Bankruptcy," § 314.

Interest on property wagered, see "Interest," § 39.

Property rights in quotations of prices by board of trade notwithstanding gambling transactions, see "Exchanges," § 13.

Recovery of money paid for lottery tickets, see "Lotteries," § 15.

Rescission of horse trade based on gambling transaction, see "Exchange of Property," § 11.

#### §§ 22-26. Parties to bet or game.

##### Cross-References.

Release of right of recovery as fraudulent conveyance, see "Fraudulent Conveyances," § 48.

Right to jury trial, see "Jury," § 14.

(a) Where a party pays money lost at gaming, not only with knowledge of the facts, but also with the knowledge of the law, equity will relieve him, and compel the adverse party to refund the money.—*Thomas v. Watson*, 9 Md. 536, note.

(b) A wager on the election of a sheriff, made between persons resident in the county and voters at the election, is against sound policy, and ought not to be sanctioned by a court of justice.—*Wroth v. Johnson*, 4 H. & McH. 284.

#### §§ 27-29. Stakeholders.

##### Cross-Reference.

Assignment of claim to wagers in hands of stakeholder, see "Assignments," § 26.

### § 30. Agents for purpose of betting or gambling.

### §§ 31-34. Parties to speculative transactions.

#### Cross-References.

- Effect of release, see "Release," § 33.  
 Permitting recovery as deprivation of property without due process of law, see "Constitutional Law," § 277.  
 Persons entitled to question constitutionality of act allowing creditors of loser to recover money of winner, see "Constitutional Law," § 42.  
 Release of cause of action, see "Release," § 2.

### § 35. Brokers in speculative transactions.

#### Annotation.

Applicability to bucket shops of penal statutes in relation to "games of hazard," "gambling devices," etc.—25 L. R. A. (N. S.) 158, note.

### § 36.— Rights and liabilities in general.

### § 37.— Margins and other deposits.

#### Cross-Reference.

See ante, § 10.

(a) Complainant entered into a gambling contract with defendant, a bucket-shop dealer, on the rise and fall of stocks; putting up margins with defendant, who agreed to keep enough money in the bank to liquidate claims. *Held*, that equity would not lend its aid to compel performance of the agreement by enjoining defendant's withdrawal of money from the bank, though he intends to remove it from the state and cheat complainant.—*Baxter v. Deneen*, 98 Md. 181, 57 Atl. 601, 64 L. R. A. 949.

### § 38.— Commissions.

(a) Though a broker acts merely as agent of his principal when he sues for his commissions and advances in forwarding a stock-gambling transaction, he stands in the same position as if seeking to enforce the original contract, and cannot recover if the transaction is illegal.—*Stewart v. Schall*, 65 Md. 289, 4 Atl. 399, 57 Am. Rep. 327. [Cited and annotated in 64 L. R. A. 168, on conflict of laws as to gambling and lottery contracts; in 11 L. R. A. (N. S.) 575, on broker's right to commissions or advances in furthering wagering contracts.]

### § 39. Summary remedies.

### § 40. Actions.

#### Cross-References.

- Actions, to recover penalties, see post, § 57.  
 Action on bond of liquor dealer for money lost at gaming in saloon, see "Intoxicating Liquors," § 88.  
 Discovery in aid of action, see "Discovery," § 4.  
 Equitable relief against judgment based on gaming transaction, see "Judgment," § 416.  
 Joinder of causes of action, see "Action," § 38.  
 Limitations, see "Limitation of Actions," § 35.  
 Process in justices' courts, see "Justices of the Peace," § 80.

### § 41.— Nature and form of remedy.

(a) Under the statute of Anne against gaming, an action for money had and received lies for money lost at gaming, though the winner was paid in goods.—*Hook v. Boteter*, 3 H. & McH. 348. (See Alex. Brit. Stat. [Coe's ed.] 932.)

### §§ 42-47.— (See Analysis.)

### § 48.— Pleading.

#### Cross-References.

Amendment setting up new cause of action, see "Pleading," § 248.  
 Separate statement of different causes of action, see "Pleading," § 52.

(a) A declaration for recovery of a wager won on the election of a sheriff is bad if it does not allege that the plaintiff and defendant were residents of the county and voters at the election.—*Wroth v. Johnson*, 4 H. & McH. 284.

### § 49.— Evidence.

#### Cross-Reference.

In criminal prosecution, see post, §§ 96-98.

(a) In an action against a broker to recover money paid him under a contract to purchase stock which plaintiff claims was a gambling contract, the validity of the contract will be presumed, and the burden of proof is upon plaintiff to establish the fact that it is a gambling contract.—*Richter v. Poe*, 109 Md. 20, 71 Atl. 420.

(b) Evidence, in an action to recover money paid a broker on an alleged gambling contract, *held* insufficient to show that the contract was a gambling contract.—*Richter v. Poe*, 109 Md. 20, 71 Atl. 420.

(c) In an action by stockholders to recover

a balance due for certain stocks alleged to have been purchased for defendant, the burden of showing that the contracts were mere gambling contracts was on the defendant; the law presuming their validity.—*King v. Zell*, 105 Md. 435, 66 Atl. 279. [Cited and annotated in 41 L. R. A. (N. S.) 941, on admissibility of previous statements by witness out of court consistent with his testimony.]

(d) Evidence in an action by stockbrokers on an account with a person to whom they claimed to have sold stock on margin held insufficient to show that the transaction was a gambling contract.—*Dryden v. Zell*, 104 Md. 345, 65 Atl. 33.

(e) In an action by a broker to recover his advances and commissions on transactions in stocks carried on margin for defendant, it is competent for defendant to show that, though the transactions were in form perfectly legal, the form was a mere guise, under which gambling might be conducted.—*Stewart v. Schall*, 65 Md. 289, 4 Atl. 399, 57 Am. Rep. 327. [Cited and annotated in 64 L. R. A. 168, on conflict of laws as to gambling and lottery contracts; in 11 L. R. A. (N. S.) 575, on broker's right to commissions or advances in furthering wagering contract.]

(f) In an action of assumpsit for the recovery of money alleged to have been lost at play, evidence examined, and held insufficient to establish the fact that the money was lost at play, and a recovery could not be awarded.—*Jones v. President, etc., of Mechanics Bank*, 8 Gill 123.

(g) In an action for a wager on the election of a sheriff, the court will not intend that the plaintiff and defendant were residents of the county and voters at the election if it is not so stated in the declaration.—*Wroth v. Johnson*, 4 H. & McH. 284.

## § 50.— Trial, judgment, and review.

### Cross-References.

Failure to interpose defense of illegality as affecting right to equitable relief against judgment, see "Judgment," § 429.

Right to review judgment on gambling contract, see "Judgment," § 861.

## II. PENALTIES AND FORFEITURES.

### Cross-References.

Recovery of money in general, see ante, § 26.

Concurrence of separate branches of Legislature as affecting validity, see "Statutes," § 23.

Construction of penal statutes, see "Statutes," § 241.

Deprivation of property without due process of law, see "Constitutional Law," § 303.

Enforcement in federal courts of state statute authorizing recovery of treble amount lost, see "Courts," § 371.

Limitations, see "Limitation of Actions," § 35.

Persons living by gambling as vagrants, see "Vagrancy," § 2.

Property rights in price quotations by board of trade notwithstanding gambling transactions, see "Exchanges," § 13.

Robbery by gamblers, see "Robbery," § 4.

§§ 51-57. (See Analysis.)

## § 58. Property subject to forfeiture.

(a) The deposit of a note of the Bank of Virginia as a wager or bet upon an election is a deposit of "money," within act 1838, c. 392, subjecting such deposits to forfeiture.—*Doyle v. Baltimore County Com'rs*, 12 G. & J. 484. (See Code, art. 33, § 114.)

## § 59. Grounds of forfeiture.

(a) Under act 1838, c. 392, § 3, forfeiting every deposit of money as a wager on an election, to be paid over to the levy court or county commissioners, it is not essential to a recovery by the commissioners that both parties to the bet should deposit money. If either makes a deposit it is forfeited.—*Doyle v. Baltimore County Com'rs*, 12 G. & J. 484. (See Code, art. 33, § 114.)

(b) Under act 1838, c. 392, § 3, subjecting to forfeiture every deposit of money as a wager or bet upon elections, no notice or warning is necessary to prevent the payment of the deposit to the parties to the bet.—*Doyle v. Baltimore County Com'rs*, 12 G. & J. 484. (See Code, art. 33, § 114.)

## § 60. Searches and seizures.

### Cross-Reference.

Unreasonable searches, see "Searches and Seizures," § 7.

### Annotation.

Power to seize gambling devices in absence of charge of violation of laws against gambling.—L. R. A. 1915A, 232, note.

(a) A musical slot machine which could be used for either legal or illegal purposes could not be seized by the police authorities as a preventive measure without it had first been properly established in a criminal pro-

ceeding that such article was designed or used for an illegal purpose.—*Wagner v. Upshur*, 95 Md. 519, 52 Atl. 509, 93 Am. St. Rep. 412. [Cited and annotated in 45 L. R. A. (N. S.) 336, on damage to, or conversion of, gambling device, as ground of action.]

### § 61. Enforcement and effect of forfeitures.

#### Cross-Reference.

Right to jury trial in summary proceedings, see "Jury," § 19.

(a) In an action to recover a deposit of money as a wager on an election as forfeited under act 1838, c. 392, the jury may award damages according to the value of the money forfeited.—*Doyle v. Baltimore County Com'rs*, 12 G. & J. 484. (See Code, art. 33, § 114.)

## III. CRIMINAL RESPONSIBILITY.

#### Cross-References.

For violation of laws for protection of children, see "Infants," § 20.

Mandamus to compel arrest of persons conducting gambling house, see "Mandamus," § 99.

Restraining offense as infringement of right to jury trial, see "Jury," § 31.

### (A) OFFENSES.

#### Cross-References.

Betting on election as violation of election laws, see "Elections," § 315.

Immunity from prosecution of witnesses for state, see "Criminal Law," § 42.

Prohibiting gambling in room where liquors are sold, see "Intoxicating Liquors," § 132.

Restraining offenses, see "Injunction," § 102.

### § 62. Nature of offense of gaming.

### § 63. Constitutional and statutory provisions.

#### Cross-References.

Concurrence of separate branches of Legislature as affecting validity, see "Statutes," § 23.

Construction of conjunctive words in statute, see "Statutes," § 197.

Denial of equal protection of law, see "Constitutional Law," § 250.

Implied repeal by adoption of Code, see "Statutes," § 167.

Operation of Constitution as to former law, see "Constitutional Law," § 24.

Setting forth provisions of act as amended, see "Statutes," § 141.

Special legislation, see "Statutes," § 86.

Uniformity of operation of law, see "Statutes," § 77.

## §§ 64-67. Elements of criminal gaming.

#### Annotation.

Horse racing as a game within gambling statutes.—7 L. R. A. (N. S.) 899; 33 L. R. A. (N. S.) 828, notes.

(a) In act 1894, c. 232, prohibiting the making of books or pools on any race, the provision that it shall not be unlawful "to make a pool or a book or to bet within the grounds of any agricultural association or upon any horse-race which shall be held within the same grounds, race course or driving park, upon which said person shall so make a pool or a book or shall so bet, upon the same day on which said race shall be so held, on not more than 30 days in any one calendar year," applies to races held on a race track as well as those held on the grounds of an agricultural association, but does not authorize an association or other owner, by using successively more than one race track, to extend the period of exemption beyond 30 days in any one year.—*State v. Dycer*, 85 Md. 246, 36 Atl. 763. (See Code [vol. 3], art. 27, § 217.)

## § 68. Games, sports, and devices prohibited.

#### Cross-Reference.

See ante, §§ 64-67; post, § 73.

#### Annotation.

Operation of slot machine as gambling.—20 L. R. A. (N. S.) 239; 34 L. R. A. (N. S.) 573; 42 L. R. A. (N. S.) 720, notes.

## § 69. Speculative transactions and dealings.

#### Cross-References.

Validity of transaction under statute making future sales criminal, see ante, § 12.

Interstate commerce clause of Constitution as affecting right to punish, see "Commerce," § 40.

## §§ 70-72. Playing or betting.

## § 73. Bookmaking or pool selling.

#### Cross-Reference.

See ante, §§ 64-67.

#### Annotation.

Oral betting as a violation of statute against bookmaking.—25 L. R. A. (N. S.) 479, note.

(a) Under Code 1860, art. 30, §§ 56, 59, 62, amended by act 1882, c. 271, punishing the keeping of "a gaming table or other place of gambling," and providing that "all

games, devices, or contrivances at which money or any other thing shall be bet or wagered shall be deemed a gaming table," held, that a person could not be indicted for selling pools on horse races, or keeping rooms where such pools are sold.—*James v. State*, 63 Md. 242. (See Code 1911 [vol. 3], art. 27, §§ 214, 217-225). [Cited and annotated in 33 L. R. A. (N. S.) 828, on horse racing as within gambling statutes.]

#### § 74. Keeping or exhibiting gaming table, device, or implements.

##### Annotation.

Card-game paraphernalia as a gambling device, within a statute against gaming.—17 L. R. A. (N. S.) 1210, note.

(a) Act 1797, c. 110, in relation to faro tables, only applies to dwelling houses, out-houses, and places occupied by tavern keepers, etc.—*Baker v. State*, 2 H. & J. 5. (See Code [vol. 3], art. 27, §§ 215-217.)

#### § 75. Keeping gaming house or place for betting or gaming.

##### Cross-References.

See ante, § 74.

Violation of injunction, see "Injunction," § 228.

##### Annotation.

Criminal responsibility of lessor of gambling house.—44 L. R. A. (N. S.) 863, note.

Criminal liability for act of servant, agent, or partner.—41 L. R. A. 659, note.

#### §§ 76-81. (See Analysis.)

#### (B) PROSECUTION AND PUNISHMENT.

##### Cross-References.

Argument of counsel, see "Criminal Law," §§ 728, 730.

Former jeopardy, see "Criminal Law," §§ 163, 198, 200, 202.

Hearsay, see "Criminal Law," § 452.

Limitations, see "Criminal Law," § 147.

Statute authorizing injunction against use of premises for gaming as permitting double jeopardy, see "Criminal Law," § 162.

Summary trials, see "Criminal Law," §§ 252, 258.

Transfer of prosecution to other court, see "Criminal Law," § 101.

Venue, see "Criminal Law," § 108.

#### § 82. Jurisdiction.

##### Cross-References.

Jurisdiction in general, see "Criminal Law," §§ 90, 94, 97.

Removal of cause from state to federal court, see "Removal of Causes," § 70.

#### § 83. Preliminary proceedings in prosecution.

##### Cross-References.

Authority of county attorney to administer oath to persons examined as to suspected violations, see "Oath," § 2.

Preliminary affidavit, see "Criminal Law," § 211.

Preliminary warrant, see "Criminal Law," §§ 207, 218, 220.

Resisting arrest, see "Obstructing Justice," § 3.

#### §§ 84-94. Indictment or information.

##### Cross-References.

In summary prosecutions, see "Criminal Law," § 252.

Joinder of parties, see "Indictment and Information," § 124.

Negating exceptions in statutes, see "Indictment and Information," § 111.

##### Requisites and sufficiency.

Averment of previous conviction, see "Indictment and Information," § 114.

Duplicity, see "Indictment and Information," § 125.

Joinder of counts, see "Indictment and Information," §§ 128-132.

Language of statute, see "Indictment and Information," § 110.

Language of statute negating exceptions and provisos, see "Indictment and Information," § 111.

Necessity of stating place of offense, see "Indictment and Information," § 86.

Omission of technical terms, see "Indictment and Information," § 76.

Sufficiency of averment of venue, see "Indictment and Information," § 86.

Sufficiency to warrant extradition, see "Extradition," § 32.

(a) Under act 1894, c. 232, making it unlawful to gamble on "any trotting race or running race," an indictment charging gambling on a trotting or running race, without specifically alleging the one or the other, is bad for duplicity.—*Stearns v. State*, 81 Md. 341, 32 Atl. 282. (See Code [vol. 3], art. 27, § 217.)

(b) Where a statute makes it unlawful to gamble on races, except on certain grounds within the state on races run on such grounds, an indictment charging gambling on races run on a track in another state negatives the exception.—*Stearns v. State*, 81 Md. 341, 32 Atl. 282. (See Code [vol. 3], art. 27, §§ 217-221.)

(c) In an indictment under Code 1860, art. 30, § 59, for "keeping a gaming table or other place for gambling," it is not necessary to set forth the particular kind of

gaming allowed, nor the particular kind of gaming table kept by accused. It is sufficient to charge the offense in the terms of the statute.—*Wheeler v. State*, 42 Md. 563. (See Code 1911 [vol. 3], art. 27, § 217.)

(d) Code 1860, art. 30, § 56, provides that "no person shall keep any gaming table, or any house, vessel, or place, on land or water, for the purpose of gambling"; and by § 59, "any person keeping a gaming table, or other place for gambling, shall be deemed guilty of a misdemeanor, and on conviction thereof," etc. *Held*, that a count in an indictment under this article, which averred that the accused at a certain time and place did, for gambling purposes, then and there keep a certain place, to wit, a certain room in his hotel, for gambling then and there, contrary to the statute, sufficiently charged the offense within the statute.—*Wheeler v. State*, 42 Md. 563. (See Code 1911 [vol. 3], art. 27, §§ 214, 217.)

(e) Counts under the statute against gaming, and counts for keeping and maintaining such a common gambling house as to constitute a nuisance at the common law, may properly be joined in the same indictment.—*Wheeler v. State*, 42 Md. 563. (See Code [vol. 3], art. 27, §§ 214, et seq.)

(f) Act 1826, c. 88, denounces the keeping of an E. O. or any other kind of gaming table (billiard tables excepted), etc. *Held*, that an indictment alleging that defendant kept a faro table need not allege that a faro table is not a billiard table, so as to take it out of the exception in the statute.—*State v. Price*, 12 G. & J. 260, 37 Am. Dec. 81. (See Code [vol. 3], art. 27, § 215.)

#### §§ 95-98. Evidence.

##### *Cross-References.*

Act requiring persons to testify as to offenses against gaming laws notwithstanding participation therein as violative of constitutional provision that no person shall be compelled to testify against himself in a criminal case, see "Witnesses," § 293.

Constitutionality of statutory provisions as to presumptions from possession of gaming implements, see "Criminal Law," § 307.

Materiality of false testimony as affecting liability for perjury, see "Perjury," § 11.

Privilege of accused as to production of documents, see "Witnesses," § 298.  
Privilege of witness, see "Witnesses," § 297.

Testimony of accomplices and codefendants, see "Criminal Law," §§ 507, 510.  
*Admissibility.*

Declarations, see "Criminal Law," § 418.  
Exclusion of parol by documentary evidence, see "Criminal Law," § 447.

Opinion evidence, see "Criminal Law," §§ 472, 478.

Other offenses, see "Criminal Law," §§ 370, 372, 373.

Self-serving declarations, see "Criminal Law," § 413.

#### §§ 99-103. Trial.

##### *Cross-References.*

Argument of counsel, see "Criminal Law," §§ 719, 720.

Election between acts, see "Criminal Law," § 678.

Grounds for continuance, see "Criminal Law," § 594.

Objections to evidence, see "Criminal Law," § 695.

Opinion of court as to facts, see "Criminal Law," § 762.

Order of proof, see "Criminal Law," § 681.

##### *Instructions.*

Credibility of witnesses, see "Criminal Law," § 785.

Harmless error, see "Criminal Law," §§ 1172, 1173.

Hypothetical statements, see "Criminal Law," § 814.

Requests, see "Criminal Law," §§ 825, 829.

Instructions on weight of evidence, see "Criminal Law," §§ 763, 764.

#### § 104. New trial.

#### § 105. Appeal and error.

##### *Cross-References.*

Exceptions in lower court, see "Criminal Law," § 1056.

Harmless error, see "Criminal Law," §§ 1165, 1169, 1170½-1173, 1175, 1177.

Presumptions on appeal, see "Criminal Law," § 1144.

Review of questions of fact, see "Criminal Law," § 1159.

#### § 106. Sentence and punishment.

##### *Cross-References.*

Cruel and unusual punishment, see "Criminal Law," § 1213.

Harmless error, see "Criminal Law," § 1177.

### GANANCIAL PROPERTY.\*

##### *Cross-Reference.*

See "Husband and Wife," §§ 246-276.

### GANGPLANK.

##### *Cross-Reference.*

On ferryboats, see "Ferries," § 32.

\*Annotation: Words and Phrases, same title.



**GAOL.**

*Cross-Reference.*  
See "Prisons."

**GAOL LIBERTIES OR LIMITS.**

*Cross-References.*

Civil liability of prison officer for escape of prisoners from limits, see "Prisons," § 14.  
Discharge on prison limits bonds, see "Arrest," § 51; "Execution," § 448.

**GARAGES.\***

*Cross-Reference.*

See "Warehousemen," § 30.

**GARBAGE.\***

*Cross-References.*

Garbage burner as nuisance, see "Nuisance," § 62.  
Municipal regulations as to removal and disposition of garbage, see "Municipal Corporations," § 607.  
Power of board of health to require license for engaging in business of removing garbage, see "Health," § 31.

**GARDEN.\***

*Cross-Reference.*

As part of homestead, see "Homestead," § 63.

**GARNISHMENT.\****Scope-Note.*

[INCLUDES subjection of property of defendants in civil actions, in possession of third persons, or of debts owing to such defendants, to payment of judgments recovered against them therein, by process of garnishment, trustee process, factorizing, etc.; nature and scope of the remedy in general; in what cases and to and against whom it is allowed, who may be charged as garnishees, trustees, factors, etc., and what property or credits may be reached; grounds of garnishment and jurisdiction over and proceedings to obtain garnishments; issuance, requisites, and validity of writs or summonses or notices of garnishment, trustee process, etc., and amendment thereof; service of writs, summonses, etc., and return thereof, and lien acquired by garnishment; quashing, vacating, or setting aside writs, etc., and dissolution thereof or discharge therefrom on giving security; claims of third persons to subject-matter of garnishment, interventions, and trials of such claims; liabilities of garnishees, trustees, etc.; proceedings to determine such liabilities, judgment therein, and enforcement of judgments; application of proceeds; liabilities on and enforcement of securities given to obtain, dissolve, discharge, etc., garnishments; and liabilities of persons other than officers for wrongful procuring, issuance, service, etc., of garnishments.

[EXCLUDES attachment of property in general (see "Attachment"); proceedings against third persons supplementary to execution (see "Execution"); garnishments in proceedings before justices of the peace (see "Justices of the Peace"); exemptions from garnishment and protection of rights of exemption (see "Exemptions"); judgment and execution after garnishment (see "Judgment"; "Execution"); review of decisions in garnishment proceedings (see "Appeal and Error"); garnishment of property conveyed in fraud of creditors (see "Fraudulent Conveyances"); effect on garnishments of proceedings under insolvent acts (see "Insolvency") or bankrupt acts (see "Bankruptcy"); and duties and liabilities of officers in respect of issuance, service, etc., of writs, summonses, etc., in garnishment proceedings (see "Clerks of Courts"; "Sheriffs and Constables"); and titles of other specific officers).

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Nature and Grounds.**

- § 1. Nature and purpose of remedy.
- § 2. Constitutional and statutory provisions.
- § 3. Actions in which garnishment is authorized.
- § 4. — Nature of cause of action in general.

\*Annotation: Words and Phrases, same title.

**I. Nature and Grounds—Continued.**

- § 5. — In suits in equity or actions on equitable grounds.
- § 6. Attachments on which proceedings are authorized.
- § 7. Judgments and executions on which proceedings are authorized.
- § 8. Return of execution unsatisfied.
- § 9. Existence of or resort to other remedy.
- § 10. Grounds of garnishment.
- § 11. Persons entitled.
- § 12. Simultaneous and successive garnishments.

**II. Persons and Property Subject to Garnishment.**

- § 13. Existence of right of action by defendant against garnishee.
- § 14. Natural persons in general.
- § 15. Persons under disability.
- § 16. Corporations in general.
- § 17. Municipal corporations and officers.
- § 18. State or United States government and officers.
- § 19. National banks.
- § 20. Waiver of exemption.
- § 21. Plaintiffs.
- § 22. Defendants.
- § 23. Husband or wife of defendant.
- § 24. Officers or agents of defendant corporation.
- § 25. Personal property in general.
- § 26. Real property and interests therein.
- § 27. Corporate stock.
- § 28. Property leased.
- § 29. Property pledged.
- § 30. Property mortgaged or otherwise incumbered.
- § 31. Legal or equitable estates or interests in general.
- § 32. Trust estates.
- § 33. Interests under contracts in general.
- § 34. Interests under insurance policies.
- § 35. Interests of heirs or distributees.
- § 36. Interests of devisees or legatees.
- § 37. Rights of action in general.
- § 38. Instruments and securities for payment of money and liabilities thereon in general.
- § 39. Liabilities for torts.
- § 40. Demands not liquidated.
- § 41. Demands not matured.
- § 42. Contingent liabilities.
- § 43. Verdicts.
- § 44. Judgments.
- § 45. Payment to defendant by garnishee before garnishment.
- § 46. — In general.
- § 47. — By bill, note, or check.
- § 48. Ownership or possession of property or rights.
- § 49. — In general.
- § 50. — Possession of garnishee.

**II. Persons and Property Subject to Garnishment.—Continued.**

- § 51. — Property or rights conveyed or assigned before garnishment.
- § 52. — Property or funds held by agent, broker, or factor.
- § 53. — Property or funds held by attorney.
- § 54. — Property in possession of bailee in general.
- § 55. — Property in course of transportation by carrier.
- § 56. — Deposits in bank.
- § 57. Property in custody of the law.
- § 58. — In general.
- § 59. — Deposits and funds in court.
- § 60. — Property held under judicial process.
- § 61. — Property held by executors, administrators, guardians, or trustees.
- § 62. Joint or several property or rights.
- § 63. Salaries of public officers or employees.

**III. Proceedings to Procure.**

- § 64. Mode and form of proceeding.
- § 65. Leave of court.
- § 66. Jurisdiction in general.
- § 67. — Nature and extent.
- § 68. — Authority of courts in general.
- § 69. — Courts of equity.
- § 70. — Particular courts.
- § 71. Jurisdiction of principal action.
- § 72. Jurisdiction of person of defendant.
- § 73. — In general.
- § 74. — Effect of appearance in action.
- § 75. — Effect of appearance in garnishment proceeding.
- § 76. Jurisdiction of person of garnishee.
- § 77. — In general.
- § 78. — Nonresidents and foreign corporations.
- § 79. Jurisdiction of property or other subject-matter of garnishment.
- § 80. — In general.
- § 81. — Situs of property or indebtedness.
- § 82. Place of bringing proceedings.
- § 83. Change of venue.
- § 84. Waiver of objections to jurisdiction or venue.
- § 85. Parties.
- § 86. Petition or affidavit.
- § 87. — Form and requisites in general.
- § 88. — Particular averments.
- § 89. Security.

**IV. Writ or Summons and Notice, Service, and Return.**

- § 90. Writ or summons of garnishment.
- § 91. — Nature in general.
- § 92. — Issuance.
- § 93. — Form and requisites.
- § 94. — Alias writs.
- § 95. — Service and levy.

**IV. Writ and Summons and Notice, Service, and Return—Continued.**

- § 96. — Return.
- § 97. — Defects, objections, and amendment.
- § 98. Summons or notice to defendant.
- § 99. — Necessity and nature in general.
- § 100. — Form and requisites.
- § 101. — Service.
- § 102. — Return.
- § 103. — Defects, objections, and amendment.
- § 104. Appearance of garnishee.

**V. Lien of Garnishment and Liability of Garnishee.**

- § 105. Nature of right acquired in general.
- § 106. Creation and existence of lien or priority.
- § 107. Priorities between garnishments.
- § 108. Priorities between garnishments and other liens or claims.
- § 109. Transfers of property or rights pending garnishment.
- § 110. Grounds and extent of liability of garnishee in general.
- § 111. Liabilities as to property of defendant.
- § 112. Delivery of property to defendant or others after garnishment.
- § 113. Liabilities as to contracts with defendant.
- § 114. Liabilities as to indebtedness to defendant.
- § 115. Liability for interest.
- § 116. Payment of indebtedness after garnishment.

**VI. Proceedings to Support or Enforce.**

- § 117. Prosecution of principal action.
- § 118. Mode and form of proceeding as between plaintiff and garnishee.
- § 119. Application of general rules of procedure.
- § 120. Equitable remedies in aid of garnishment.
- § 121. Duty of garnishee to make disclosure.
- § 122. Grounds of objection and defenses by garnishee.
- § 123. — In general.
- § 124. — Defects in proceedings in principal action.
- § 125. — Defects in garnishment proceedings.
- § 126. — Pendency of other proceedings.
- § 127. — Defenses as against defendant in general.
- § 128. — Limitations.
- § 129. — Claim to property by garnishee.
- § 130. — Set-off or counterclaim by garnishee.
- § 131. — Right of exemption of defendant.
- § 132. — Claims to property by third persons.
- § 133. Bringing in new parties.
- § 134. Further pleadings in general.
- § 135. Interrogatories.
- § 136. Fees of garnishee as witness.
- § 137. Objections by garnishee and determination thereof.
- § 138. Answer or disclosure of garnishee.
- § 139. — In general.
- § 140. — Persons who may make.
- § 141. — Time for making.

**VI. Proceedings to Support or Enforce—Continued.**

- § 142. — Mode and form.
- § 143. — Requisites and sufficiency of disclosure.
- § 144. — Requisites and sufficiency as defense.
- § 145. — Objections and exceptions.
- § 146. — Amended and supplemental answers.
- § 147. — Further disclosure.
- § 148. — Conclusiveness and effect in general.
- § 149. Oral examination of garnishee.
- § 150. Agreed statement instead of disclosure.
- § 151. Liabilities of garnishee on false or defective answer.
- § 152. Failure of garnishee to answer.
- § 153. — Effect in general.
- § 154. — Proceedings on default.
- § 155. — Liabilities to plaintiff.
- § 156. Delivery of property by garnishee.
- § 157. Payment into court or to officer by garnishee.
- § 158. Traverse of answer and issues thereon.
- § 159. Evidence as between plaintiff and garnishee.
- § 160. — In general.
- § 161. — Answer as evidence.
- § 162. — Presumptions and burden of proof.
- § 163. — Admissibility.
- § 164. — Weight and sufficiency.
- § 165. Dismissal or discharge of garnishee before trial.
- § 166. Trial of issues between plaintiff and garnishee.
- § 167. — Scope of inquiry and powers of court.
- § 168. — Time for trial.
- § 169. — Preliminary proceedings.
- § 170. — Mode and conduct in general.
- § 171. — Questions for jury.
- § 172. — Instructions.
- § 173. — Verdict and findings.
- § 174. Judgment against garnishee.
- § 175. — Nature and essentials in general.
- § 176. Summons to show cause or other notice.
- § 177. — Time of rendition.
- § 178. — By default.
- § 179. — Conditional judgment on default and scire facias thereon.
- § 180. — On answer.
- § 181. — On trial of issues.
- § 182. — Delivery of property or other subject-matter.
- § 183. — Personal judgment.
- § 184. — Protection or indemnity to garnishee.
- § 185. — Entry and record.
- § 186. — Amendment and correction.
- § 187. — Opening and vacating.
- § 188. Execution and enforcement of judgment.
- § 189. — In general.

**VI. Proceedings to Support or Enforce—Continued.**

- § 190. — Actions by plaintiff against garnishee.
- § 191. Costs and attorney's fees.

**VII. Quashing, Vacating, Dissolution, or Abandonment.**

- § 192. Nature and form of remedy.
- § 193. Grounds for quashing, vacating, or dissolving.
- § 194. Motions and proceedings thereon.
- § 195. Discharge of garnishment on security.
- § 196. Dissolution by causes subsequent to garnishment.
- § 197. Voluntary dismissal or withdrawal.
- § 198. Abandonment.
- § 199. Operation and effect.

**VIII. Claims by Third Persons.**

- § 200. Suggestion of claim in general.
- § 201. Claims or liens prior or superior to garnishment.
- § 202. Rights of claimants of property or other subject-matter.
- § 203. — In general.
- § 204. — Intervention to contest garnishment.
- § 205. Disclosure of claims by garnishee.
- § 206. Proceedings to make claimant party to garnishment.
- § 207. Notice to claimant.
- § 208. Disclaimer.
- § 209. Interposition of claim or intervention in garnishment.
- § 210. Security by claimant.
- § 211. Actions by or against claimants.
- § 212. Proceedings for establishment and determination of claims.
- § 213. — Nature and form of remedy.
- § 214. — Jurisdiction.
- § 215. — Parties.
- § 216. — Pleading.
- § 217. — Issues and questions considered.
- § 218. — Evidence.
- § 219. — Conduct of trial or hearing.
- § 220. — Questions for jury.
- § 221. — Instructions.
- § 222. — Verdict and findings.
- § 223. — Judgment and enforcement thereof.
- § 224. — Appeal.
- § 225. — Costs.
- § 226. Operation and effect of determination.

**IX. Operation and Effect of Garnishment, Judgment, or Payment.**

- § 227. Effect of garnishment as between plaintiff and defendant.
- § 228. Effect of garnishment as between plaintiff and garnishee.
- § 229. Effect of garnishment as between defendant and garnishee.
- § 230. — In general.
- § 231. — Other actions and proceedings against garnishee.
- § 232. Effect of garnishment as between garnishee and third persons.
- § 233. Effect of delivery of property or payment by garnishee without judgment or order of court.

**IX. Operation and Effect of Garnishment, Judgment, or Payment—Cont'd.**

- § 234. Effect of judgment against garnishee and payment or other satisfaction thereof.
- § 235. — In general.
- § 236. — Judgment on default or admission.
- § 237. — Foreign judgment.
- § 238. Effect of judgment for garnishee.

**X. Liabilities on Bonds or Undertakings.**

- § 239. Accrual or release of liability by breach or fulfillment of condition.
- § 240. — Bonds or undertakings to procure garnishment.
- § 241. — Bonds or undertakings to dissolve garnishment
- § 242. — Claimants' bonds.
- § 243. Rights and remedies of sureties.
- § 243½. Discharge of sureties.
- § 244. Extent of liability.
- § 245. Enforcement in principal action.
- § 246. Summary remedies.
- § 247. Actions.

**XI. Wrongful Garnishment.**

- § 248. Nature and grounds of liability.
- § 249. Persons liable.
- § 250. Recovery or set-off of damages in principal action.
- § 251. Actions.

*Cross-References.*

See "Attachment"; "Execution."

Adoption by federal courts of practice of state courts, see "Courts," § 346.

Answer to second writ of garnishment as plea of res judicata, see "Judgment," § 949.

Application of general statute, see "Limitation of Actions," § 34.

Arrest of judgment, see "Judgment," § 267.

As affected by receivership, see "Receivers," §§ 79, 181.

As excuse for delay in transportation of goods, see "Carriers," § 99.

Best and secondary evidence, see "Evidence," § 158.

Bond of indemnity to garnishee on payment to plaintiff before judgment as against public policy, see "Contracts," § 113.

Collection of taxes, see "Taxation," § 572.

Commencement of action, see "Limitation of Actions," § 130.

Construction of statutes adopted from other states, see "Statutes," § 226.

Debtor of insolvent estate as person subject to garnishment, see "Executors and Administrators," § 411.

Discovery in aid of garnishment, see "Discovery," § 4.

Effect of assignment for creditors, see "Assignments for Benefit of Creditors," §§ 193, 343.

Effect of bankruptcy, see "Bankruptcy," §§ 195, 198-203, 431, 433.

Effect of insolvency, see "Insolvency," § 68.

Effect of payment by note on garnishment proceedings, see "Payment," § 17.

Enforcement of claims against railroad property, see "Railroads," § 177.

Equitable actions to enforce satisfaction of judgments, see "Creditors' Suit."

Equitable relief from judgment against garnishee, see "Judgment," §§ 407, 414, 415, 429, 443.

Evidence, presumption as to regularity of proceedings, see "Evidence," § 82.

Exclusiveness of statutory remedy for enforcement of mechanic's lien, see "Mechanics' Liens," § 246.

Exemptions, see "Exemptions."

Failure of court to find on particular questions, see "Trial," § 397.

Fees of officer for service of summons or notice, see "Sheriffs and Constables," § 33.

Filing affidavit or bond for garnishment on Sunday, see "Sunday," § 30.

Foreign judgments, see "Judgment," § 824.

Garnishment as stopping running of interest, see "Interest," § 51.

Garnishment as suspending limitations, see "Limitation of Actions," § 105.

Garnishment interfering with interstate commerce, see "Commerce," § 81.

In actions by or against corporations, see "Corporations," §§ 509, 670.

In admiralty, see "Admiralty," § 47.

Interpleader by garnishee, see "Interpleader," § 11.

- Judgment on consent, offer or admission, see "Judgment," § 85.
- Laws relating to garnishment as deprivation of property without due process of law, see "Constitutional Law," §§ 306, 312.
- Liability to creditor for interest pending garnishment proceedings, see "Interest," § 51.
- Malicious garnishment, see "Malicious Prosecution," §§ 13, 40, 67.
- Mandamus to control acts of court or judge in reference to garnishment proceedings, see "Mandamus," §§ 4, 36.
- Matters relating to jurisdiction and authority of courts in general, see "Courts," §§ 205, 219, 346, 435, 500, 501, 507.
- Mode of pleading set-off in garnishment proceedings, see "Pleading," § 142.
- Name of defendant, *idem sonans*, see "Names," § 16.
- Of property fraudulently transferred by debtor, see "Fraudulent Conveyances," §§ 182, 229.
- Of stockholder, see "Corporations," § 255.
- Pendency of garnishment proceedings as defense in action by landlord to recover possession for nonpayment of rent, see "Landlord and Tenant," § 284.
- Persons concluded by judgment, see "Judgment," § 705.
- Practice in federal courts, see "Courts," § 346.
- Priorities between garnishment and attachment, see "Attachment," § 180.
- Priorities between garnishment and other liens or claims, see "Assignments for Benefit of Creditors," § 336; "Attorney and Client," § 184; "Chattel Mortgages," § 138; "Mechanics' Liens," § 201; "Mortgages," §§ 151, 567; "Municipal Corporations," § 373; "Sheriffs and Constables," § 20; "Vendor and Purchaser," § 260.
- Procedure in garnishment of particular classes of persons, see "Banks and Banking," § 224; "Corporations," §§ 509, 670; "Counties," § 221; "Municipal Corporations," § 1031; "Partnership," § 208.
- Procedure in justices' courts, see "Justices of the Peace," §§ 48, 87.
- Protection and enforcement of exemption rights, see "Exemptions," § 110.
- Relationship of judge to garnishee as disqualification, see "Judges," § 45.
- Remedies of creditors of *cestui que trust*, see "Trusts," § 150.
- Requisites and sufficiency of transfer of shares of stock to defeat garnishment, see "Corporations," § 136.
- Requisites and validity of assignments to defeat garnishment, see "Assignments," §§ 52, 98.
- Restraining garnishment, see "Injunction," § 27.
- Review of proceedings, see "Appeal and Error," §§ 71, 99, 150, 158, 166, 190, 327, 347, 376, 382, 446, 487, 500, 518, 684, 873, 877, 920, 953, 1043, 1180, 1241; "Certiorari," § 17.
- Revival by creditors of judgment held by debtor against garnishee, see "Judgment," § 864.
- Right of foreign receiver to intervene in garnishment proceedings, see "Receivers," § 207.
- Right to attachment in action against garnishee for false or defective answer, see "Attachment," § 4.
- Right to jury trial on question of exemption from garnishment, see "Jury," § 16.
- Service of writ or notice on holiday, see "Holidays," § 5.
- Setting forth provisions of amendment to garnishment acts, see "Statutes," § 141.
- Stay of garnishment proceedings, see "Action," § 68.
- Suffering garnishment as act of bankruptcy, see "Bankruptcy," § 59.
- Testimony as to transactions with persons since deceased, see "Witnesses," § 139.
- Transfer of bill of lading as affecting garnishment of consignee by creditor of consignor, see "Carriers," § 58.
- Trustee process as mode of commencing action, see "Process," § 8.

## I. NATURE AND GROUNDS.

### § 1. Nature and purpose of remedy.

(a) An attachment is essentially a legal proceeding, and in no way appropriate to ascertain and settle the equitable rights between the garnishee and defendant, or to ascertain, by adjusting partnership affairs, the true interest of defendant in the fund attached.—*People's Bank v. Shryock*, 48 Md. 427, 30 Am. Rep. 476. [Cited and annotated in 46 L. R. A. 486, on levy on partnership property for partner's debt; in 59 L. R. A. 379, on garnishment of unliquidated claims.]

### § 2. Constitutional and statutory provisions.

#### Cross-References.

Construction of statute adopted from other state, see "Statutes," § 226.

Laws subjecting salaries of officers to garnishment as deprivation of property without due process of law, see "Constitutional Law," § 306.

Setting forth provisions of act amended, see "Statutes," § 141.

#### Annotation.

See Code, art. 9, §§ 1, et seq; act 1916, c. 596, p. 1207, amending Code, art. 9, § 2.

### §§ 3-5. Actions in which garnishment is authorized.

#### Cross-References.

By or against particular classes of per-

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.



sons, see "Banks and Banking," § 224; "Corporations," §§ 509, 670; "Counties," § 221; "Municipal Corporations," § 1031; "Partnership," §§ 117, 208.

(a) A claim to form the basis of garnishment within the statute must be one for an ascertained amount of liquidated indebtedness, to which a plaintiff can properly swear, and the cause of action, which must be filed with the declaration, must be one which either on its face shows the liability of defendant and the amount thereof, or which itself furnishes the standard or means of arriving at such amount.—*Blick v. Mercantile Trust & Deposit Co.*, 113 Md. 487, 77 Atl. 844.

(b) A claim for services rendered in making investments, collections, settlements, and in acting generally as the superintendent of another's financial affairs in the country during certain years at a specified sum per year is a claim for unliquidated damages, and garnishment may not be resorted to by the claimant.—*Blick v. Mercantile Trust & Deposit Co.*, 113 Md. 487, 77 Atl. 844.

(c) Where a contract fixes the amount due, or furnishes a standard by which the amount may be certainly determined, a claim to the amount due under the contract is liquidated, and the claimant may proceed in garnishment.—*Blick v. Mercantile Trust & Deposit Co.*, 113 Md. 487, 77 Atl. 844.

§§ 6, 7. (See Analysis.)

#### § 8. Return of execution unsatisfied.

##### *Cross-References.*

Burden of proof, see post, § 162.

As prerequisite to equitable actions to enforce satisfaction of judgments, see "Creditors' Suit," § 16.

#### § 9. Existence of or resort to other remedy.

##### *Cross-References.*

Exclusiveness of statutory remedy for enforcement of mechanic's lien, see "Mechanics' Liens," § 246.

Remedy by garnishment as bar to creditors' suit, see "Creditors' Suit," § 5.

#### § 10. Grounds of garnishment.

(a) Attachment, aided by garnishment, does not lie against one as a nonresident where he is only absent from the state on business, intending to return, though he remains absent for several years.—*Risewick*

*v. Davis*, 19 Md. 82. [Cited and annotated in 19 L. R. A. 665, on what is nonresidence for attachment purposes.]

#### § 11. Persons entitled.

(a) Under act 1832, c. 280, declaring that the provisions of Attachment Law 1715, c. 40, with its supplements, shall apply to all debts due, and claims accruing, to any corporations, to the same effect as if they were natural persons, municipal and private corporations may proceed as natural persons to recover debts due them by attachment on warrant.—*Gordon v. City of Baltimore*, 5 Gill 231. (See Code, art. 9, § 1.)

(b) One who is not a citizen of the United States cannot maintain garnishment, under act 1795, c. 56.—*Shivers v. Wilson*, 5 H. & J. 130, 9 Am. Dec. 479. (See Code, art. 9, § 1.)

#### § 12. Simultaneous and successive garnishments.

### II. PERSONS AND PROPERTY SUBJECT TO GARNISHMENT.

##### *Cross-References.*

Debtor of insolvent estate, see "Executors and Administrators," § 411.

Right to jury trial on question of exemption from garnishment, see "Jury," § 16.

#### § 13. Existence of right of action by defendant against garnishee.

(a) In order to charge a garnishee, there must be such a liability on his part to defendant as would enable defendant to maintain his action at law directly against the garnishee in his own name, and for his own use, and to recover a judgment.—*Baltimore & O. R. Co. v. Wheeler*, 18 Md. 372. [Cited and annotated in 28 L. R. A. 600, on liability of carriers to garnishment; in 59 L. R. A. 377, on garnishment of unliquidated claims.] *Odend'hal v. Devlin*, 48 Md. 439.

(b) When railroads, canals, and other companies for transportation of freight and passengers have mutual dealings for the promotion of their business, the relation of debtor and creditor, and the liability to garnishment as dependent thereon, must depend on the course of such dealings.—*Baltimore & O. R. Co. v. Wheeler*, 18 Md. 372. [Cited and annotated, see supra.]

(c) A garnishee has the right to appear, confess judgment for the amount in his

hands, and recover costs out of the same; and a person cannot be charged as garnishee whose legal relation to the fund is such that he cannot take advantage of that provision in the law.—*Cockey v. Leister*, 12 Md. 124, 71 Am. Dec. 588. [Cited and annotated in 59 L. R. A. 386, on garnishment of unliquidated claims; in 13 L. R. A. (N. S.) 759, on right to attach or garnish fund in hands of officer of court after order to pay same to party.]

§§ 14, 15. (See Analysis.)

### § 16. Corporations in general.

#### Cross-References.

Garnishment of deposits in bank, see post, § 56.

Effect of subsequent receivership of garnishee bank on garnishment proceedings, see "Banks and Banking," § 77.

Procedure in garnishment of corporations, see "Banks and Banking," § 224; "Corporations," §§ 509, 670.

(a) A corporation doing business within the state may be subjected to garnishment, where it holds property or credits of defendant for which defendant might sue in this state.—*Myer v. Liverpool, L. & G. Ins. Co.*, 40 Md. 595. [Cited and annotated in 70 L. R. A. 536, on nonresident's right to sue foreign corporation.]

(b) Act 1832, c. 306, authorizing corporations to sue and be sued, and providing that process in a suit against a corporation shall be served on its officers, authorizes the serving of writs of attachment on a corporation as garnishee.—*Boyd v. Chesapeake & O. Canal Co.*, 17 Md. 195, 79 Am. Dec. 646. (See Code, art. 23, § 7.) [Cited and annotated in 30 L. R. A. 105, on injunction against execution sales or other proceedings under final process; in 30 L. R. A. 361, on injunction against judgments in garnishment proceedings.]

### § 17. Municipal corporations and officers.

#### Cross-References.

Protection of salaries from garnishment, see post, § 63.

Sufficiency of answer to raise privilege of exemption, see post, § 144.

Liability of city to garnishment dependent on validity of contract forming basis of indebtedness, see "Municipal Corporations," § 231.

Procedure in garnishment of counties, see "Counties," § 221.

Procedure in garnishment of municipal corporations, see "Municipal Corporations," § 1031.

#### Annotation.

Liability of county to garnishment.—37 L. R. A. 207, note.

(a) Act 1825, c. 114, § 2, authorizing attachments to be laid in the hands of any "person or persons whatever, corporate or sole," includes private, and not public, corporations.—*City of Baltimore v. Root*, 8 Md. 95, 63 Am. Dec. 692. (See Code, art. 9, § 2; act 1916, c. 596, p. 1207.) [Cited and annotated in 55 L. R. A. 353, on plaintiff's right to summon or charge himself as garnishee.]

### § 18. State or United States government and officers.

#### Cross-References.

Protection of salaries from garnishment, see post, § 63.

Validity of supersedeas bond in action for money won at gaming, see "Appeal and Error," § 1241.

#### Annotation.

Against state officer, as suit against the state.—44 L. R. A. (N. S.) 218, note.

### § 19. National banks.

#### Cross-Reference.

Garnishment of deposits in bank, see post, § 56.

### § 20. Waiver of exemption.

### § 21. Plaintiffs.

#### Annotation.

Right of plaintiff to summon or charge himself as garnishee.—55 L. R. A. 353; 34 L. R. A. (N. S.) 510, notes.

### § 22. Defendants.

### § 23. Husband or wife of defendant.

(a) Where the relation of debtor and creditor exists between husband and wife, the creditor of the wife may, by attachment, under Code 1860, art. 45, § 7, against her separate estate, make her husband garnishee.—*Odend'hal v. Devlin*, 48 Md. 439. (See Code 1911, art. 45, §§ 4, 5; Id. [vol. 3], art. 45, § 4.)

### § 24. Officers or agents of defendant corporation.

#### Cross-References.

Effect of fraudulent transfer of funds to individual account, see "Fraudulent Conveyances," § 182.

#### Annotation.

Garnishment of an officer or agent of a corporation to secure a demand against the corporation.—36 L. R. A. 561, note.

§§ 25, 26. (See Analysis.)

§ 27. Corporate stock.

*Cross-Reference.*

Situs of corporate stock, see post, § 81.

*Annotation.*

Stockholder's interest in corporation as subject of garnishment by his creditors.—18 L. R. A. (N. S.) 1158, note.

Shares of stock in foreign corporation as subject of garnishment.—55 L. R. A. 797, note.

§ 28. Property leased.

§ 29. Property pledged.

(a) A sum deposited by a parent with the agent of a college, as security for the board, tuition, etc., of his children, in good faith and in compliance with the regulations of the college, cannot be attached by a creditor, while the education of the children is in progress, although at the time the attachment is brought a balance is due to the parent.—*Poe v. St. Mary's College*, 4 Gill 499. [Cited and annotated in 59 L. R. A. 369, on garnishment of unliquidated claims.]

§§ 30, 31. (See Analysis.)

§ 32. Trust estates.

*Cross-Reference.*

Property held by trustee as in custody of law, see post, § 61.

(a) A trust fund may be reached by garnishment, and a mortgage thereon, void for fraud or want of consideration, set aside in favor of the garnishing creditor of the cestui que trust.—*Stockbridge v. Fahnestock*, 87 Md. 127, 39 Atl. 95; *Allen v. Same*, Id.

§ 33. Interests under contracts in general.

(a) Where a written contract existed between two railroad companies that they should each receive an advance for the other for their mutual benefits, in consideration of the relative positions of their roads, to increase the public accommodation, the balances between them to be settled monthly or annually, the one owing the other at a settlement would be charged as garnishee of the other.—*Baltimore & O. R. Co. v. Wheeler*, 18 Md. 372. [Cited and annotated in 28 L. R. A. 600, on liability of carriers to garnishment; in 59 L. R. A. 377, on garnishment of unliquidated claims.]

(b) A sum of money due, which by express contract was to be paid by work and labor, is a credit that may be attached.—*Louderman v. Wilson*, 2 H. & J. 379. [Cited and annotated in 59 L. R. A. 376, on garnishment of unliquidated claims.]

§ 34. Interests under insurance policies.

(a) An insurer who has elected, under the terms of a policy, to rebuild a building destroyed by fire, instead of paying the loss, and who has contracted for its erection, cannot be garnished by a creditor of the insured who has recovered a judgment on a mortgage on the premises executed after they had been insured; and that, although the premises are advertised for sale under the mortgage.—*Stone v. Mutual Fire Ins. Co.*, 74 Md. 579, 22 Atl. 1051, 14 L. R. A. 684.

§ 35. Interests of heirs or distributees.

*Annotation.*

Garnishment of distributive shares and residuary legacies before settlement.—59 L. R. A. 387, note.

Garnishment of husband's interest in wife's legacy or distributive share.—47 L. R. A. 360, note.

(a) A. and B., with other co-heirs, conveyed all their ancestor's real estate to a trustee for sale and distribution under direction of the Circuit Court, which was to adjust any dispute that might arise in the premises. The court having referred the distribution to an auditor, and his account giving A., who was a nonresident, the sum of \$520.05, having been ratified nisi by the court, but not finally confirmed, B. sued A. and summoned the trustee as garnishee. Held, that the fund in the hands of the trustee was not liable to attachment under these circumstances.—*Cockey v. Leister*, 12 Md. 124, 71 Am. Dec. 588. [Cited and annotated in 59 L. R. A. 386, on garnishment of unliquidated claims; in 13 L. R. A. (N. S.) 759, on right to attach or garnish fund in hands of officer of court after order to pay same to party.]

§§ 36, 37. (See Analysis.)

§ 38. Instruments and securities for payment of money and liabilities thereon in general.

*Cross-Reference.*

Instruments assigned or transferred, see post, § 51.

(a) A bond conditioned for the payment of money, but failing to state the exact amount, when containing sufficient data to enable the court to ascertain the amount due thereon, is sufficient evidence of the debt to support attachment.—*Williams v. Jones*, 38 Md. 555. [Cited and annotated in 13 L. R. A. (N. S.) 759, on right to attach or garnish fund in hands of officer of court after order to pay same to party.]

### § 39. Liabilities for torts.

### § 40. Demands not liquidated.

#### Annotation.

The garnishment of unliquidated claims.—59 L. R. A. 353, note.

### § 41. Demands not matured.

### § 42. Contingent liabilities.

(a) Plaintiffs laid an attachment on the proceeds of sale of a vessel in the hands of a garnishee, to whom defendant had contracted to convey his interest under an agreement whereby the proceeds of sale were to be applied to pay certain debts due by him, one of which was due to the garnishee himself. The interest of defendant in the vessel was to be held as collateral security for the payment of this debt, and to indemnify him for the payment of other debts due by defendant on account of the vessel, which the garnishee assumed to pay, and did pay, out of the purchase money; and, on the repayment of these sums to the garnishee by defendant, the interest of the latter in the vessel was to be reconveyed to him by the garnishee. Held, that, as plaintiffs had not laid the attachment on the vessel, but on the proceeds of sale, they could not sustain their attachment without conceding the sale to, and possession of, the garnishee.—*Troxall v. Applegarth*, 24 Md. 163.

### § 43. Verdicts.

#### Annotation.

Verdict before judgment.—4 L. R. A. (N. S.) 624, note.

### § 44. Judgments.

#### Annotation.

Garnishment of judgment rendered in another state.—43 L. R. A. (N. S.) 551, note.

### §§ 45-47. Payment to defendant by garnishee before garnishment.

#### Cross-Reference.

Payment after garnishment, see post, § 116.

### § 48. Ownership or possession of property or rights.

#### Cross-Reference.

Garnishment of stakeholder, see "Gaming," § 28.

### § 49.—In general.

### § 50.—Possession of garnishee.

(a) A garnishee was in the habit of purchasing and advancing money on drafts drawn by defendant, and the money on such drafts were sometimes paid to defendant, and sometimes left by him in the hands of the garnishee with the understanding that the latter was to hold it for the use of certain persons named by defendant at the time, and to be paid to such persons only on the presentation of the check or order of defendant. On a judgment recovered by plaintiff against defendant, an attachment by way of execution was issued and served on the garnishee. After the service, money was left by defendant in the hands of the garnishee, who paid it to the parties named on the presentation of defendant's checks. There was no evidence that the deposit was made by defendant with the knowledge of the parties named by him, nor of any agreement between such parties and the garnishee either before or after the deposit was made. Held, that the money so deposited was the property of defendant, subject to garnishment at the suit of plaintiff.—*Nicholson v. Crook*, 56 Md. 55.

(b) Where the effects of an insolvent were in the hands of a receiver in chancery, in violation of the rights of the trustee in insolvency, an attachment thereon was properly laid in the hands of the trustee, since, in law, he would be regarded as a legal possessor.—*Glenn v. Boston & S. Glass Co.*, 7 Md. 287.

(c) Actual possession of money or property by the garnishee is not necessary to make an attachment operative, if he has the legal right to possession or control of it.—*Glenn v. Boston & S. Glass Co.*, 7 Md. 287.

**§ 51.— Property or rights conveyed or assigned before garnishment.**

*Cross-References.*

Burden of proof as to validity of assignment, see post, § 162.

Instructions, see post, § 172.

Lien of garnishment on property or rights transferred pending garnishment, see post, § 109.

Garnishment as remedy to each property fraudulently transferred, see "Fraudulent Conveyances," § 229.

Liability of grantee in conveyance fraudulent as to creditors, see "Fraudulent Conveyances," § 182.

Remedies of creditors of cestui que trust, see "Trusts," § 150.

Requisites and sufficiency of transfer of shares of stock, see "Corporations," § 136.

Requisites and validity of assignment as affecting right of garnishment, see "Assignments," §§ 52, 98.

Transfer of bill of lading as affecting garnishment of consignee by creditor of consignor, see "Carriers," § 58.

(a) Where, by any pre-existing bona fide contract, the accountability of a garnishee for property of a defendant in his hands has been removed or modified, the garnishee's liability is correspondingly affected, since garnishment cannot change the contract between the garnishee and defendant or prevent the garnishee from performing a contract with a third person.—*Farley v. Colver*, 113 Md. 379, 77 Atl. 589.

(b) In garnishment of the proceeds of the sale of a vessel, it appeared that, at the time the vessel was sold and delivered to the garnishee, there was an agreement between defendant and garnishee that the latter should, in consideration of the price agreed on, pay certain debts due by defendant, which were designated by him, amounting in the aggregate to the whole purchase money, and that this agreement was performed by the garnishee. Held, that it was immaterial that the bill of sale was, under the Act of Congress, ineffectual to pass the legal title as against the garnishee, as the agreement would be binding on defendant, and protect the fund from attachment by his creditors.—*Troxall v. Applegarth*, 24 Md. 163.

(c) Where property was conveyed to trustees to pay creditors, and the grantor afterwards applied for relief under the insolvency laws, rents and profits accruing before the insolvency proceedings, but not included in

the schedule of assets, are subject to trustee process.—*Hupe v. Seibert*, 4 Gill 240.

**§ 52.— Property or funds held by agent, broker, or factor.**

*Cross-Reference.*

Jurisdiction of nonresidents and foreign corporations, see post, § 78.

**§ 53.— Property or funds held by attorney.**

**§ 54.— Property in possession of bailee in general.**

*Annotation.*

Garnishment of carriers as to debts and ordinary bailments.—28 L. R. A. 600, note.

(a) The master of a vessel, who had hired her from the owners under a contract by which he was to victual and man the vessel and receive a certain portion of the freights earned, made a charter party, in his own name, to third persons. An attachment having issued against the master for supplies furnished the vessel, process of garnishment was served on the charterers for freights due under the charter party. The master of the vessel was indebted to the owners, for their proportion of the freights earned, in a much larger amount than the charterers were to him; and the owners of the vessel had notified these, prior to the issuing of the attachment, not to pay over to the master the balance, due for freights earned under the charter party. Held, that such balance was not the property of the master, and therefore not subject to the attachment.—*Stirling v. Loud*, 33 Md. 436.

**§ 55.— Property in course of transportation by carrier.**

*Annotation.*

Garnishment of carriers as to property held for transportation.—28 L. R. A. 601, note.

**§ 56.— Deposits in bank.**

*Annotation.*

Garnishment of bank deposit in a form importing that depositor is acting as agent or fiduciary.—34 L. R. A. (N. S.) 1207, note.

Garnishment of bank deposit in name of one as "agent."—10 L. R. A. (N. S.) 706, note.

Payment by bank under garnishment of deposit to party other than depositor but of same name.—11 L. R. A. (N. S.) 248, note.

Garnishment of surplus on deposit.—59 L. R. A. 369, note.

(a) Where the payee of a draft deposited it with a bank, and received credit at the bank as depositor, the proceeds of the draft became the property of the bank, and could not be recovered by the drawer on a failure of consideration of the draft as between the drawer and the payee.—*T. S. Reed Grocery Co. v. Canton Nat. Bank*, 100 Md. 299, 59 Atl. 716, 70 L. R. A. 959.

(b) Where a person deposits in a bank a check payable to his order, indorsed, "For deposit to the credit" of the payee, which is placed to his credit as cash, the title thereto is vested in the bank, though it has been its custom to charge dishonored checks to the depositor, instead of proceeding against the drawee.—*Ditch v. Western Nat. Bank*, 79 Md. 192, 29 Atl. 72, 138, 23 L. R. A. 164, 47 Am. St. Rep. 375. [Cited and annotated in 52 L. R. A. (N. S.) 631, 634, on liability of bank taking paper for collection for correspondent's default.]

(c) Where a person deposits in a bank a check payable to his order, indorsed, "For deposit to the credit" of the payee, the depositor cannot claim the check, as against another bank, with which it has been deposited by the first bank, which received credit for its full amount, and thereafter, having overdrawn its account, made an assignment for creditors.—*Ditch v. Western Nat. Bank*, 79 Md. 192, 29 Atl. 72, 138, 23 L. R. A. 164, 47 Am. St. Rep. 375. [Cited and annotated, see supra.]

(d) Funds deposited in a bank in the name of the owner by an agent cannot be held by attachment against the agent and garnishment of the bank.—*First Nat. Bank v. Jagers*, 31 Md. 38, 100 Am. Dec. 53.

#### § 57. Property in custody of the law.

##### Cross-References.

Concurrent and conflicting jurisdiction of state and federal courts, see "Courts," §§ 500, 502.

Property assigned for benefit of creditors, see "Assignments for Benefit of Creditors," § 193.

Property in hands of assignee in insolvency, see "Insolvency," § 68.

Property in hands of receiver, see "Receiver," §§ 79, 181.

#### § 58.— In general.

##### Annotation.

Right to garnish or attach proceeds of execution sale in the hands of the sheriff.—43 L. R. A. (N. S.) 571, note.

(a) Surplus proceeds of land of an attachment debtor sold for nonpayment of taxes are not liable to attachment in the hands of the county treasurer.—*Wilson v. Ridgely*, 46 Md. 235.

#### § 59.— Deposits and funds in court.

##### Annotation.

Right to garnish bond in the hands of officer of court after he has been ordered to pay same to party.—13 L. R. A. (N. S.) 759; 30 L. R. A. (N. S.) 720, notes.

(a) Where an order of court required that a portion of a fund which had been deposited with the court be paid by the clerk to a party, such portion of the fund was not subject to an attachment against such party, laid in the hands of the clerk; the moneys being at that time in custodia legis.—*Dale v. Brumbly*, 98 Md. 468, 56 Atl. 807, 64 L. R. A. 112.

(b) Moneys in the hands of the clerk of the court were not subject to attachment, inasmuch as they were in the hands of a public officer.—*Dale v. Brumbly*, 98 Md. 468, 56 Atl. 807, 64 L. R. A. 112.

#### § 60.— Property held under judicial process.

(a) Where real estate has been sold by a trustee under a decree of court, and the auditor's account distributing the proceeds of sales stated and ratified, and such proceeds paid into court under an order to that effect, and deposited in bank to the credit of the cause, an attachment laid in the hands of the trustee to affect a part of such proceeds cannot be sustained.—*Mattingly v. Grimes*, 48 Md. 102. [Cited and annotated in 13 L. R. A. (N. S.) 759, on right to attach or garnish fund in hands of officer of court after order to pay same to party.]

(b) Money held by a trustee appointed by the court of chancery, and belonging to a nonresident, may be attached by his creditors, where the final audit has been ratified, and the amount belonging to the debtor has been ascertained, and an order made directing the funds to be paid.—*Williams v. Jones*, 38 Md. 555. [Cited and annotated in 13 L.

R. A. (N. S.) 759, on right to attach or garnish fund in hands of officer of court after order to pay same to party.]

(c) Funds in the hands of a trustee, under a decree in equity to sell property and account with the court for the proceeds, are not subject to garnishment; but this rule does not apply where the funds have been distributed by the auditor's account, and finally ratified by an order directing application by the trustee of the funds in his hands not brought into court.—*Cockey v. Leister*, 12 Md. 124, 71 Am. Dec. 588. [Cited and annotated in 59 L. R. A. 386, on garnishment of unliquidated claims; in 13 L. R. A. (N. S.) 759, on right to attach or garnish fund in hands of officer of court after order to pay same to party.]

(d) The receiver's custody of property is that of the court which appointed him, and he cannot be garnished therefor without leave of court.—*Bentley v. Shrieve*, 4 Md. Ch. 412.

#### § 61.—Property held by executors, administrators, guardians, or trustees.

##### Cross-References.

See ante, § 60.

Trust estates as subject to garnishment in general, see ante, § 32.

##### Annotation.

Garnishment of guardian for debt of ward.—11 L. R. A. (N. S.) 706, note.

Application of statutes to executors and administrators.—47 L. R. A. 346, note.

(a) Act Cong. March 3, 1899 (30 Stat. 1191), making an appropriation for the payment of French spoliation claims, provided that in all cases where the original sufferers were adjudged bankrupts the awards should be made on behalf of the next of kin instead of the assignees in bankruptcy, and that the awards in case of individual claimants should not be paid until the court of claims should certify that the personal representatives on whose behalf the award was made represented the next of kin. *Held*, that a fund in the possession of an administrator to be distributed to the next of kin of a claimant was not subject to garnishment for the debts of the next of kin.—*Thurston v. Wilmer*, 94 Md. 455, 51 Atl. 96, 89 Am. St. Rep. 438.

(b) The mere fact that an attachment has been laid in the hands of an administrator

as garnishee is no ground for quashing the writ.—*Hardesty v. Campbell*, 29 Md. 533. [Cited and annotated in 47 L. R. A. 351, on garnishment of executor or administrator; in 55 L. R. A. 353, on plaintiff's right to summon or charge himself as garnishee.]

#### § 62. Joint or several property or rights.

(a) A debt due to a partnership is not liable to attachment at the suit of a creditor of one of the partners, where the partnership is a continuing one, and there has been no adjustment between the partners.—*People's Bank v. Shryock*, 48 Md. 427, 30 Am. Dec. 476. [Cited and annotated in 46 L. R. A. 486, on levy on partnership property for partner's debt; in 59 L. R. A. 379, on garnishment of unliquidated claims.]

(b) A judgment creditor for the separate debt of a sole surviving partner may attach, by way of execution, a debt due the firm, without showing the state of accounts between such survivor and his deceased partners.—*Berry v. Harris*, 22 Md. 30, 85 Am. Dec. 639. [Cited and annotated in 59 L. R. A. 381, on garnishment of unliquidated claims.]

#### § 63. Salaries of public officers or employees.

##### Cross-References.

Municipal corporations or officers as garnishees, see ante, § 17.

State or United States government and officers as garnishees, see ante, § 18.

##### Annotation.

Effect of assignment of unearned salary or fees of public officer to put the same when earned beyond the reach of creditors.—31 L. R. A. (N. S.) 374, note.

Garnishment of unearned salary.—20 L. R. A. (N. S.) 912, note.

(a) Moneys in the hands of an ex-sheriff, consisting of fees collected by him for an ex-register of wills, may properly be made the subject of trustee process for the debt of the ex-register; the official relations of the parties being at an end.—*Robertson v. Beall*, 10 Md. 125.

(b) The salary of a municipal officer is not subject to garnishment.—*City of Baltimore v. Root*, 8 Md. 95. [Cited and annotated in 55 L. R. A. 353, on plaintiff's right to summon or charge himself as garnishee.]

### III. PROCEEDINGS TO PROCURE.

#### § 64. Mode and form of proceeding.

#### § 65. Leave of court.

(a) A warrant for an attachment was addressed "to the clerk of Baltimore County Court," and "Mr. Norwood," the clerk of the Court of Common Pleas, was by it directed to issue the writ. There was no such court as Baltimore County Court, but there was the Court of Common Pleas. *Held*, that the prefix of the words "clerk of Baltimore County Court," in the address of the warrant, was mere surplusage and of no effect.—*McCoy v. Boyle*, 10 Md. 391.

#### §§ 66-70. Jurisdiction in general.

##### Cross-References.

Concurrent and conflicting jurisdiction of state and federal courts, see "Courts," § 500.

Jurisdiction of court of Indian territory, see "Courts," § 435.

#### §§ 71-75. (See Analysis.)

#### §§ 76-78. Jurisdiction of person of garnishee.

##### Cross-Reference.

Appearance, see post, § 104.

##### Annotation.

Service on foreign corporation in garnishment cases.—23 L. R. A. 500, note.

#### §§ 79-81. Jurisdiction of property or other subject-matter of garnishment.

##### Cross-Reference.

Affecting jurisdiction of garnishment in action against corporation, see "Corporations," § 509.

##### Annotation.

Where debt garnishable.—67 L. R. A. 209, note.

Situs of debt for purpose of jurisdiction.—51 L. R. A. 715, note.

#### §§ 82-84. (See Analysis.)

#### § 85. Parties.

##### Cross-Reference.

Bringing in new parties in general, see post, § 133.

(a) B. and wife conveyed land to T.; the deed showing on its face that the premises conveyed were the private property of B. T. simultaneously executed notes for the unpaid portion of the purchase money and a mortgage to secure the same. The notes and mortgage were both made payable to B.'s

wife, and were afterwards assigned, for valuable consideration, to E. *Held*, on attachment by a creditor of B., that T. was the proper garnishee, and that E. could only intervene as claimant.—*Green v. Early*, 39 Md. 223.

#### §§ 86-88. Petition or affidavit.

##### Cross-References.

Affidavit on rule to show cause of action, see post, § 176.

Defects as ground for quashing, see post, § 193.

Filing affidavit on Sunday, see "Sunday," § 30.

(a) Any variance between an account filed with the original declaration under the Rule-Day Act (act 1894, p. 229, c. 173), and one filed with a petition for a writ of attachment is immaterial, where the defendant was never summoned, and no judgment by default was sought.—*Stewart v. Chappell*, 98 Md. 527, 57 Atl. 17. (See Balto. City Rev. Charter, §§ 312, et seq; Code [vol. 3], art. 75, § 24, subs. 107.)

(b) The total omission in the affidavit for garnishment of the averment of plaintiff's citizenship is not fatal; it being sufficient to aver that he is a resident of the United States.—*McCoy v. Boyle*, 10 Md. 391.

#### § 89. Security.

##### Cross-References.

Discharge on security, see post, § 195.

Liabilities on bonds, see post, §§ 239-247.

Filing bond on Sunday, see "Sunday," § 30.

### IV. WRIT OR SUMMONS AND NOTICE, SERVICE, AND RETURN.

##### Cross-Reference.

Service on holiday, see "Holidays," § 5.

#### § 90. Writ or summons of garnishment.

#### § 91.— Nature in general.

#### § 92.— Issuance.

(a) An attachment on a judgment is by act 1834, c. 189, placed on the same footing with regard to its issue as writs of *fi. fa.* or *ca. sa.*, and, like them, cannot issue more than three years after judgment without *scire facias*.—*Boyd v. Talbott*, 7 Md. 404. (See Code, art. 9, § 29.)



### § 93.—Form and requisites.

#### Cross-References.

See ante, §§ 16, 88.

Name of defendant idem sonans, see "Names," § 16.

(a) Attachment Law 1862, c. 262, is construed to require, as essential to a valid attachment, a clause of scire facias as to defendant in the judgment whereon the same is issued. The omission of such clause, however, renders the writ, not void, but voidable only, and is a defect of which the garnishee should be allowed to take advantage in resisting a judgment of condemnation.—*Johnson v. Lemmon*, 37 Md. 336. (See Code, art. 9, § 29.)

(b) An attachment on a judgment cannot be issued from one County Court and made returnable to another County Court.—*Harden v. Moores*, 7 H. & J. 4.

### § 94.—Alias writs.

### § 95.—Service and levy.

#### Cross-References.

See post, § 101.

Service on foreign insurance company, see "Insurance," § 627.

(a) Code 1904, art. 75, § 166, permits constructive or substituted service only where direct personal service is prevented by threats, etc., or the person to be served is within a fortified place. Article 9, §§ 11, 29, require the writ in garnishment proceeding to contain a clause, commanding the officer executing it to make known to each person, in whose hands the chattels attached are, to appear on the return to show cause why such chattels shall not be condemned and execution had. *Held*, that the court had no power to render judgment of condemnation against a garnishee, where the only service was upon an agent or employee of the firm to be garnished.—*Wilmer v. Epstein*, 116 Md. 140, 81 Atl. 379. (See Code 1911, art. 9, §§ 11, 29; art. 75, § 172.)

(b) Since service of garnishment on a corporation must be made on certain officers, an attorney for the corporation, not being one of its officers, cannot accept service, so as to bind the corporation.—*Northern Cent. Ry. Co. v. Rider*, 45 Md. 24.

(c) The service of the writ of garnishment was not invalid because it appeared by the

indorsement thereon to have been laid in the hands of the garnishee on two different days.—*Anderson v. Graff*, 41 Md. 601.

(d) Service of an attachment on a garnishee, who was a German, is sufficiently shown by the evidence of the officer that he explained the matter in both the German and the English languages to the garnishee, who answered in both and took a memorandum, though it was shown that he understood English imperfectly.—*Windwart v. Allen*, 13 Md. 196. [Cited and annotated in 30 L. R. A. 361, on injunction against judgments in garnishment proceedings; in 31 L. R. A. 204, 205, on injunction against judgment for want of jurisdiction or invalidity; in 31 L. R. A. 775, on injunction against judgments for defenses existing prior to rendition.]

### § 96.—Return.

(a) An officer may amend his return to a writ of garnishment so as to make it conform to the facts as they occurred.—*O'Connell v. Ackerman*, 62 Md. 337. [Cited and annotated in 26 L. R. A. 596, 597, on right to attach property in hands of assignee for creditors.]

(b) The right of the sheriff to amend his return to a writ of garnishment so as to make it conform to the truth, and the right of the parties interested to have him amend his return, is a common-law right, and in no way depends on the provisions of Code 1860, art. 75, § 23.—*Main v. Lynch*, 54 Md. 658. (See Code 1911, art. 75, § 35.) [Cited and annotated in 30 L. R. A. 467, 474, 481, 486, on intent to defraud sustaining attachment.]

(c) Where the return in garnishment of "Summoned" by the officer is disputed, the burden of proof is on the person assailing the return, and it is necessary for him to show by satisfactory evidence that he was not legally summoned.—*Abell v. Simon*, 49 Md. 318.

(d) The return of a summons in garnishment, served on a corporation, should designate the person and official character on whom service was made.—*Northern Cent. Ry. Co. v. Rider*, 45 Md. 24.

(e) It is not necessary that the sheriff's return of service of a writ of garnishment should show for what amount the attachment was levied.—*Freidenrich v. Moore*, 24 Md. 295.

(f) A sheriff's return to a writ of attachment, "Laid in the hands of [the garnishee] in the presence of" two witnesses, is sufficient, though it does not certify that the sheriff "made known" to the garnishee to appear and show cause why condemnation should not be had.—*McCoy v. Boyle*, 10 Md. 391.

(g) Where a person is in possession of property intended to be affected by an attachment, he should be returned by the officer as the garnishee.—*Van Brunt v. Pike*, 4 Gill 270, 45 Am. Dec. 126.

#### § 97.— Defects, objections, and amendment.

(a) A writ of attachment was dated Sept. 22d, but professed to be founded on a warrant dated Sept. 23d, and was in fact issued on the latter day. *Held*, that the date of the writ was manifestly a clerical error, and it was proper to allow an amendment.—*McCoy v. Boyle*, 10 Md. 391.

#### §§ 98-103. Summons or notice to defendant.

##### Cross-References.

Fees of officers, see "Sheriffs and Constables," § 33.

Service by deputy de facto, see "Sheriffs and Constables," § 20.

(a) Where an attachment by way of execution is issued within three months from the day of the judgment, a clause of scire facias in the writ as to defendant in judgment, and notice to him, are not necessary.—*First Nat. Bank v. Weckler*, 52 Md. 30.

(b) The remedy by attachment under act 1862, c. 262, to some extent performs the double office of execution and scire facias. It calls on defendant to show cause why condemnation should not be had of the property, rights, or credits seized under the attachment. He has the right to appear and plead to the attachment; and, unless he has been duly warned of the time and place for his appearance to make defense to the writ, no judgment of condemnation thereon can be rendered.—*Johnson v. Lemmon*, 37 Md. 336. (See Code, art. 9, §§ 11, 29.)

(c) Garnishment proceedings are invalid where the writ does not contain a clause of scire facias as to the principal defendant.—*Johnson v. Lemmon*, 37 Md. 336.

#### § 104. Appearance of garnishee.

(a) Under Code 1888, art. 5, § 2, providing that from any judgment or determination any party may appeal, a garnishee, who is also a plaintiff, may appeal from an order overruling his motion to strike out an unauthorized appearance for him by an attorney, and pleas filed by him in the garnishee's name for the garnishee and nonresident defendant.—*Albert v. Albert*, 78 Md. 338, 28 Atl. 388. (See Code 1911, art. 5, § 2; *Id.* [vol. 3], art. 5, § 2.

(b) A garnishee may move to quash the garnishment after having appeared and confessed assets, and expressed a willingness to abide by the order of the court.—*Cromwell v. Royal Canadian Ins. Co.*, 49 Md. 366, 33 Am. Rep. 258. [Cited and annotated in 63 L. R. A. 840, on conflict of laws as to insurance contracts; in 70 L. R. A. 536, on non-resident's right to sue foreign corporation.]

(c) Where an attachment is laid in the hands of several garnishees, each must appear separately, and the clerk must docket as many cases as there are appearances.—*Berry v. Matthews*, 13 Md. 537.

(d) Service of garnishment on a privileged person is not void, but a mere irregularity, which may be waived by a trial or confession of judgment. Such privilege must be claimed by plea or motion at the proper time.—*Peters v. League*, 13 Md. 58, 71 Am. Dec. 622. [Cited and annotated in 30 L. R. A. 362, on injunction against judgments in garnishment proceedings; in 51 L. R. A. (N. S.) 601, on right of garnishee to attack judgment against principal defendant for lack of jurisdiction.]

#### V. LIEN OF GARNISHMENT AND LIABILITY OF GARNISHEE.

##### Cross-References.

Liabilities of garnishee for failure to answer, see post, §§ 153-155.

Effect of action as *lis pendens*, see "*Lis Pendens*," § 11.

Effect of discharge in bankruptcy, see "*Bankruptcy*," §§ 195, 433.

Lien to sustain creditors' suit, see "*Creditors' Suit*," § 12.

Validity of lien as against assignee or trustee in insolvency, see "*Insolvency*," § 68.

#### § 105. Nature of right acquired in general.

(a) The rights of the attaching creditor to recover against the garnishee depends on

the subsisting rights between the garnishee and the debtor in the attachment, and the test of the garnishee's liability is that he has funds, credits, or property in his hands of the debtor for which the latter may sue.—*Farley v. Colver*, 113 Md. 379, 77 Atl. 589.

(b) Under act 1886, c. 287, which provides that no attachment or garnishment levied on corporate stock shall affect the rights of any pledgee, acquired before such levy, or prevent such pledgee and the corporation from transferring such stocks on the company's books, the court does not, by garnishment of a pledgee, obtain any control of the stock, and a bill does not lie for a receiver, and to enforce such garnishment.—*Morton v. Grafflin*, 68 Md. 545, 13 Atl. 341, 15 Atl. 298. (See Code, art. 9, § 18; art. 23, §§ 50, 68-71.) [Cited and annotated in 55 L. R. A. 354, on plaintiff's right to summon or charge himself as garnishee; in 55 L. R. A. 797, on attachment of shares in foreign corporation.]

(c) A party acquires an inchoate lien on property by a writ of attachment laid in the hands of the grantee as garnishee of the grantor.—*Cooke v. Cooke*, 43 Md. 522. [Cited and annotated in 32 L. R. A. 34, 36, 40, 42, on participation in vendor's fraud invalidating transfer for good consideration; in 41 L. R. A. (N. S.) 10, 12, on admissibility of vendor's declarations out of court, as to purpose in making transfer attacked as fraudulent.]

#### § 106. Creation and existence of lien or priority.

(a) The attachment process, when pursuing credits, operates on credits in the hands of the garnishee and liable to condemnation not only at the time of service, if then attached, but at the time of trial and judgment and at any time after service and before trial and judgment.—*Farley v. Colver*, 113 Md. 379, 77 Atl. 589.

(b) Creditors may acquire an inchoate lien upon a fund attached in the hands of a trustee, and their respective rights may be adjudicated, and their claims paid in the order in which the attachments were laid, in a proceeding brought by such trustee to determine the proper distribution of the fund, though they could not obtain a final judgment against the trustee.—*Ohio Brass Co. v. Clark*, 86 Md. 344, 37 Atl. 899.

(c) Under Code 1888, art. 9, § 10, which provides that "any kind of property or credits belonging to defendant in plaintiff's own hands, or in the hands of any one else, may be attached," an inchoate lien attaches to money or credits in the hands of the garnishee on service of the attachment, and it is not necessary to levy it on specific property.—*Buschmann v. Hanna*, 72 Md. 1, 18 Atl. 962. (See Code 1911, art. 9, § 10.)

(d) An attachment on a judgment, while having some of the attributes of an execution, has likewise, and especially as against the garnishee, many qualities of mesne process. The mere laying of the attachment, or the seizure of property under it, creates simply an inchoate lien, which can only be perfected by judgment of condemnation.—*Rhodes v. Amsinck*, 38 Md. 345.

(e) An attachment laid on a note due to defendant from the garnishee creates a lien, and the note cannot afterwards be passed away.—*Stewart v. West*, 1 H. & J. 536.

#### § 107. Priorities between garnishments.

##### Cross-Reference.

Effect of amendment of writ, see ante, § 97.

(a) The Bank of A. was indebted to the Bank of B. on judgment, and to the United States on a prior judgment. C. was indebted to the Bank of A. on judgment rendered previous to either of these judgments. The Bank of B. attached C.'s judgment, and the United States, after such attachment was issued, attached the same debt, and obtained judgment of condemnation, which C. satisfied. The attachment of the Bank of B. was still pending. *Held*, that neither the proceedings on the part of the United States, the inability of the Bank of A. to pay its debts, nor the appointment and bonding of receivers under the authority of the federal court prior to the suing out of the first attachment, but which receivers never acted, constituted any defense to such prior attachment, which operated as a lien on the debt attached.—*Farmers Bank v. Beaton*, 7 G. & J. 421, 28 Am. Dec. 226. [Cited and annotated in 20 L. R. A. 393, 394, on exclusiveness of jurisdiction by appointment of receiver; in 29 L. R. A. 231, on priority of state or United States in payment.]

(b) Where there are two attachments, the one which was first delivered to the sheriff, and first laid in the hands of the garnishee, will have the priority of right.—*Wallace v. Forrest*, 2 H. & McH. 261.

### § 108. Priorities between garnishments and other liens or claims.

#### Cross-References.

See ante, § 107.

Rights of prior grantee or assignee, see ante, § 51.

Between garnishment and attachment, see "Attachment," § 180.

Between garnishment and attorney's lien, see "Attorney and Client," § 184.

Between garnishment and lien for labor or materials furnished for public improvements, see "Municipal Corporations," § 373.

Between garnishment and mechanics' liens, see "Mechanics' Liens," § 201.

Between garnishment and mortgages, see "Chattel Mortgages," § 138; "Mortgages," § 151.

Between garnishment and vendor's liens, see "Vendor and Purchaser," § 260.

Between holder of bond for title and garnishee of vendor in distribution of proceeds of foreclosure sale, see "Mortgages," § 567.

Garnishment lien prior to assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 336.

### § 109. Transfers of property or rights pending garnishment.

#### Cross-Reference.

Prior to garnishment, see ante, § 51.

(a) The maker of a negotiable note will not be held as garnishee of the payee or indorser, where the note, either before or after the service of the attachment, has been transferred to a third person before its maturity for value, and without actual notice to him of the attachment.—*Cruett v. Jenkins*, 53 Md. 217.

### § 110. Grounds and extent of liability of garnishee in general.

(a) Where a trustee in equity has sold property, the proceeds of which are to be distributed to various persons, a creditor of one of the distributees may lay an attachment in the hands of the trustee before a final account ascertaining the precise share of the debtor has been stated and ratified; and if, at the time of the trial of the attachment, such account has been so stated and ratified, the judgment of condemnation, if

obtained, will bind the sum so ascertained to be the debtor's share.—*Early v. Dorsett*, 45 Md. 462. [Cited and annotated in 59 L. R. A. 386, on garnishment of unliquidated claims.]

(b) Plaintiff in garnishment can hold the garnishee only to the extent of defendant's claim against the garnishee.—*Myer v. Liverpool, L. & G. Ins. Co.*, 40 Md. 595. [Cited and annotated in 70 L. R. A. 536, on non-resident's right to sue foreign corporation.]

(c) It has been the general practice to condemn all credits or property in the hands of the garnishee of the debtor at the time of the trial.—*Glenn v. Boston & S. Glass Co.*, 7 Md. 287.

### § 111. Liabilities as to property of defendant.

### § 112. Delivery of property to defendant or others after garnishment.

#### Cross-Reference.

Effect of delivery to person other than defendant, see post, § 233.

### § 113. Liabilities as to contracts with defendant.

(a) Plaintiffs laid an attachment on effects in the hands of a garnishee, to whom defendant had contracted to convey his interest in a vessel for a certain sum. By the terms of sale, the purchase money was not to be paid to defendant, but applied to pay certain debts due by him, one of which was due to the garnishee himself. The interest of defendant in the vessel was to be held as collateral security for the payment of this debt, and to indemnify him for the payment of other debts due by defendant on account of the vessel, which the garnishee assumed to pay, and did pay out of the purchase money. On the repayment of these sums to the garnishee by defendant, the interest of the latter in the vessel was to be reconveyed to him by the garnishee. *Held*, that, as the attachment was laid on the fund in the hands of the garnishee, the right of plaintiff to recover must necessarily depend on the state of the accounts between defendant and the garnishee, and the effect of the agreement between them at the time the attachment was laid.—*Troxall v. Applegarth*, 24 Md. 163.

(b) The liability of a garnishee is usually determined by his accountability to defendant, but if, before attachment, any bona fide contract between garnishee and defendant has affected this accountability, the garnishment will be also affected and subordinate to this contract.—*Baltimore & O. R. Co. v. Wheeler*, 18 Md. 372. [Cited and annotated in 28 L. R. A. 600, on liability of carriers to garnishment; in 59 L. R. A. 377, on garnishment of unliquidated claims.]

#### § 114. Liabilities as to indebtedness to defendant.

(a) A judgment creditor who has garnished a company, and procured a judgment nisi for his claim in full, has no right to a fund due from the company to the debtor at the time of the garnishment, but which was subsequently paid for the benefit of the debtor to a trustee in whose hands it was attached by other creditors, as it is presumed the company retained funds sufficient to pay the claim.—*Ohio Brass Co. v. Clark*, 86 Md. 344, 37 Atl. 899.

#### § 115. Liability for interest.

##### *Cross-Reference.*

Liability to creditor for interest pending garnishment proceedings, see "Interest," § 51.

(a) Where the garnishee contests plaintiff's claim either in his own right or on behalf of defendant, he is liable for interest on the fund pending the contest.—*Chase v. Manhardt*, 1 Bland 333. [Cited and annotated in 30 L. R. A. 790, on injunction against judgments obtained by fraud, accident, mistake, surprise, and duress; in 40 L. R. A. (N. S.) 589, 600, on acceptance of principal as affecting right to interest.]

#### § 116. Payment of indebtedness after garnishment.

##### *Cross-References.*

As defense in action for failure to appear and answer, see post, § 155.

Effect of payment to person other than defendant, see post, § 233.

Payment before garnishment, see ante, §§ 46, 47.

(a) A judgment debtor, shortly after the rendition of judgment against him and after the laying of an attachment in the hands of the garnishee, transferred his property and business to his wife to defraud creditors. The garnishee subsequently made payments to the judgment debtor after notice that the

attachment on the judgment was intended to bind all the funds due or to become due by the garnishee to the judgment debtor out of transactions in the name of the judgment debtor or his wife and that the judgment creditor at the trial would show that the transfer to the wife was in fraud of creditors. Held, that the garnishee was liable to the judgment creditor for the money so paid as funds of the judgment debtor.—*Farley v. Colver*, 113 Md. 379, 77 Atl. 589.

### VI. PROCEEDINGS TO SUPPORT OR ENFORCE.

##### *Cross-References.*

Ancillary jurisdiction of appellate court to examine garnishee in aid of its final process, see "Courts," § 205.

Appellate jurisdiction as dependent on amount or value in controversy, see "Courts," § 219.

Discovery in aid of garnishment, see "Discovery," § 4.

Following state statutes and practice in federal courts, see "Courts," § 346.

Review of proceedings, see "Appeal and Error," §§ 150, 166, 347, 376, 382, 446, 487; "Certiorari," § 17.

Right to jury trial on question of exemption from garnishment, see "Jury," § 16.

Stay of proceedings, see "Action," § 68.

#### § 117. Prosecution of principal action.

##### *Cross-Reference.*

Necessity of judgment against defendant to support judgment against garnishee, see post, § 175.

#### §§ 118-121. (See Analysis.)

#### § 122. Grounds of objections and defenses by garnishee.

##### *Cross-Reference.*

Defense by mortgagee, see "Chattel Mortgage," § 267.

#### § 123.— In general.

(a) The garnishee may take advantage of such defects, not apparent on the face of the proceedings, as show that the attachment issued irregularly, or that the property did not belong to defendant, by motion to quash, or by plea.—*Lambden v. Bowie*, 2 Md. 334.

#### § 124.— Defects in proceedings in principal action.

##### *Cross-Reference.*

See post, § 158.

(a) After judgment confessed by defendant, the question of indebtedness by de-

defendant to plaintiff is not open to the garnishee, under his plea of nulla bona.—*Bartlett v. Wilbur*, 53 Md. 485.

(b) A garnishee may plead in bar that at the time of issuing the writ defendant was a resident of the state.—*Barr v. Perry*, 3 Gill 313.

(c) A garnishee has the right to show as a defense that the judgment against the defendant is void for want of jurisdiction.—*Wever v. Baltzell*, 6 G. & J. 335.

(d) The objection by the garnishee that the affidavit for attachment was insufficient to give the court jurisdiction of the principal action may be taken advantage of at any time, either by motion to quash before or after pleading, by demurrer, by a prayer for an instruction from the court, after verdict on a motion in arrest, or after judgment on appeal.—*Bruce v. Cook*, 6 G. & J. 345.

#### § 125.— Defects in garnishment proceedings.

(a) The omission in a writ of attachment, under act 1862, c. 262, of a clause of scire facias as to defendant, does not render the writ absolutely void, but voidable only. It is such a defect as the garnishee should be allowed to take advantage of in resistance of a judgment of condemnation.—*Johnson v. Lemmon*, 37 Md. 336. (See Code, art. 9, §§ 11, 29.)

#### § 126.— Pendency of other proceedings.

(a) To a plea by a garnishee, that, since the institution of the suit, defendant corporation had gone into the hands of a receiver, a demurrer is properly sustained.—*Bartlett v. Wilbur*, 53 Md. 485.

#### § 127.— Defenses as against defendant in general.

(a) Though Code 1888, art. 9, § 14, provides that a garnishee in an attachment against a nonresident defendant may plead in behalf of defendant, he need not, and if he does he subjects himself to costs, so that without the consent of garnishee an attorney cannot appear, and plead in his name for him and defendant, though plaintiff and garnishee be the same person, but defendant must appear

and plead for himself.—*Albert v. Albert*, 78 Md. 338, 28 Atl. 388. (See Code 1911, art. 9, § 14.)

#### § 128.— Limitations.

##### Cross-References.

Commencement of action as affecting limitations, see "Limitation of Actions," § 130.

Effect of garnishment as suspending limitations, see "Limitation of Actions," § 105.

#### § 129.— Claim to property by garnishee.

#### § 130.— Set-off or counterclaim by garnishee.

##### Annotation.

Right of bank as against garnishing creditor to set off unmatured claim against deposit of debtor.—27 L. R. A. (N. S.) 811, note.

(a) Where funds in a bank standing to the credit of a customer are attached, the garnishee may appropriate such funds to the payment of a debt to himself which had been contracted by defendant before, but did not become due until after, the service of the attachment.—*Farmers & Merchants Bank v. Franklin Bank*, 31 Md. 404. [Cited and annotated in 27 L. R. A. (N. S.) 813, on right of bank to set off unmatured claim against deposit.]

(b) The trustee in a deed of trust for the benefit of creditors, which was admitted to be void, was a creditor of the grantor's to an amount exceeding the proceeds in his hands of the property conveyed by the deed. An attachment was served on him as garnishee, on a judgment recovered by a creditor of the grantor. *Held*, that the trustee had a right to set off his own claim against the fund in his hands.—*Peters v. Cunningham*, 10 Md. 554.

#### § 131.— Right of exemption of defendant.

##### Cross-References.

Effect of failure to interpose exemption, see post, § 235.

Right to set up exemption as defense to action for failure to appear and answer, see post, § 155.

Conclusiveness of justice's determination on debtor's claim to exemption, see "Justices of the Peace," § 87.

(a) A garnishee is entitled to avail himself of the defense that the indebtedness sought to be subjected is exempt to the debtor as earnings.—*Wilmer v. Mann*, 121 Md. 239, 88 Atl. 222.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 132.—Claims to property by third persons.**

**§ 133. Bringing in new parties.**

*Cross-Reference.*

Parties to proceedings to procure, see ante, § 85.

**§ 134. Further pleadings in general.**

(a) A declaration need not be filed in a case against garnishees who appear to and contest an attachment or warrant, if a short note be filed at the time of issuing the capias sued out with the attachment.—*Smith v. Gilmor*, 4 H. & J. 177; *Trasher v. Everhart*, 3 G. & J. 234.

**§ 135. Interrogatories.**

*Cross-References.*

See ante, § 106.

Record for purpose of review, see "Appeal and Error," § 518.

(a) Plaintiff, who has filed interrogatories to a garnishee, may waive them by omitting to give notice of them to the garnishee, according to the rule of court, which is not enforced until the appearance of the garnishee.—*Boyd v. Chesapeake & O. Canal Co.*, 17 Md. 195, 79 Am. Dec. 646. [Cited and annotated in 30 L. R. A. 105, on injunction against execution sales or other proceedings under final process; in 30 L. R. A. 361, on injunction against judgments in garnishment proceedings.]

(b) Act 1795, relating to trustee process, authorized interrogatories to the trustee "touching or concerning the property of defendant in his possession at the time of serving the writ of attachment, or at any other time." Held, that inquiry might be made as to property obtained either before or after the service of the writ.—*Devries v. Buchanan*, 10 Md. 210.

**§ 136. Fees of garnishee as witness.**

*Cross-Reference.*

In justice's court, see "Justices of the Peace," § 87.

**§ 137. Objections by garnishee and determination thereof.**

**§§ 138-148. Answer or disclosure of garnishee.**

*Cross-References.*

Amendment, see post, § 158.

Answer as evidence, see post, § 161.

Liabilities of garnishee on failure to answer, see post, §§ 153-155.

Liabilities of garnishee on false or defective answer, see post, § 151.

Right to use answer to contradict officer's return of service of writ, see ante, § 95. Traverse of answer and issues thereon, see post, § 158.

Answer to second writ of garnishment as plea of res judicata, see "Judgment," § 949.

(a) A garnishee's answer need not be under oath.—*Wilmer v. Mann*, 121 Md. 239, 88 Atl. 222.

(b) Where a garnishee's answers, signed by his attorney, were filed within 20 days after the service of the interrogatories as required by Code, art. 9, § 13, the court properly permitted similar answers, signed by the garnishee, to be substituted after the 20 days had expired.—*Wilmer v. Mann*, 121 Md. 239, 88 Atl. 222.

(c) A garnishee under plea of nulla bona may show assignment of the assets by defendant before the garnishment.—*Stockbridge v. Franklin Bank*, 86 Md. 189, 37 Atl. 645.

(d) A defendant in attachment is not affected by a plea put in by the garnishee. The former may plead the statutory bar, independently of the rules to which the latter is subject.—*Spear v. Griffin*, 23 Md. 418.

(e) The answers of garnishees are to be construed against them in all matters referred to in said answers which are left uncertain.—*Matthews v. Dare*, 20 Md. 248.

**§§ 149-151. (See Analysis.)**

**§§ 152-155. Failure of garnishee to answer.**

*Cross-References.*

Failure to tender fees as excuse, see ante, § 136.

Filing answer in wrong court, see ante, § 139.

Judgment by default, see post, § 178.

(a) A garnishee's failure to plead after receiving due notice of the attachment amounts to an admission of assets in his hands, and precludes a subsequent inquiry as to the want of funds.—*Sarlouis v. Firemen's Ins. Co.*, 45 Md. 241.

**§ 156. Delivery of property by garnishee.**

**§ 157. Payment into court or to officer by garnishee.**

*Cross-Reference.*

As defense to action by claimant, see post, § 233.

### § 158. Traverse of answer and issues thereon.

#### Cross-References.

As mode of proceeding by claimant, see post, § 213.

Time for trial of issues, see post, § 168.

(a) Where, in an attachment cause, the garnishee pleaded that defendant was a resident of the state, plaintiff, if he wished to avail himself of the act of 1839, giving a similar remedy against absconding debtors where plaintiff, or one of plaintiffs, was a citizen of the state, should make it the subject of a replication.—*Barr v. Perry*, 3 Gill 313. (See Code, art. 9, §§ 1, 11, 13.)

### § 159. Evidence as between plaintiff and garnishee.

#### Cross-References.

Evidence on motion to dismiss or discharge garnishee, see post, § 165.

Testimony as to transactions with persons since deceased, see "Witnesses," § 139.

### § 160.— In general.

### § 161.— Answer as evidence.

#### Cross-Reference.

In proceedings for determination of claims, see post, § 218.

(a) The answer of a trustee must be regarded, not merely as a pleading, but as evidence, and, when used on a trial of issues, must be read entire, and not merely that part which charges the trustee.—*Devries v. Buchanan*, 10 Md. 210.

### § 162.— Presumptions and burden of proof.

(a) Though it be unnecessary to allege in the affidavit for garnishment that plaintiff is a resident, plaintiff must show such fact at the trial.—*Barr v. Perry*, 3 Gill 313.

(b) Since an affidavit for an attachment, under act 1795, c. 56, must state that plaintiff is a citizen of Maryland, or of some other of the United States, on the plea of non assumpsit the fact of such citizenship must be proved.—*Mandeville v. Jarrett*, 6 H. & J. 497. (See Code, art. 9, §§ 1, 4-8.)

(c) The proceedings, under act 1795, c. 56, must not only show that the party suing out the attachment is a citizen of Maryland, or of some other of the United States, but when the garnishee appears and pleads non assumpsit, etc., by defendant, plaintiff must,

at the trial, prove himself to have been, at the time of issuing the attachment, a citizen of Maryland or of some other of the United States.—*Shivers v. Wilson*, 5 H. & J. 130, 9 Am. Dec. 497. (See Code, art. 9, §§ 1, 4-8.)

### § 163.— Admissibility.

(a) Where a trustee of a fund was garnished in an action by a creditor against the cestui que trust, evidence that the garnishee notified a mortgagee of the fund of the garnishment within 60 hours, by mail, was properly admitted, where the mortgagee did not deny the receiving of the letter.—*Stockbridge v. Fahnestock*, 87 Md. 127, 39 Atl. 95; *Allen v. Same*, Id.

(b) A garnishee who has testified that on a certain day he had goods belonging to the debtor, a corporation, may state that the debtor's president said to him, after said day, and before garnishment, that such goods had been transferred to another, and directed him to hold them for such transferee.—*Hadden v. Linville*, 86 Md. 210, 38 Atl. 37.

(c) Where funds deposited in a bank in the name of the owner by an agent are sought to be attached as belonging to the agent by garnishment against the bank, the bank account of the agent in the name of the owner is admissible in evidence; it being accompanied with a tender of further proof that a portion of the funds to the credit of the owner in the account in fact belonged to the agent.—*First Nat. Bank v. Jaggars*, 31 Md. 38, 100 Am. Dec. 53.

(d) A record of the proceedings and final discharge, under the insolvent laws, of a person against whose goods and property an attachment issued on a judgment rendered against him before such discharge, and laid in the hands of his garnishees, is admissible in evidence on the trial against the garnishees.—*Harding v. Hull*, 5 H. & J. 478.

### § 164.— Weight and sufficiency.

(a) Garnishees gave in evidence the contract under which the principal defendant had worked for them, and proved that they had paid certain sums for him. Held, that it was competent for the jury, in absence of



proof of other dealings, to find that these sums were paid on account of the contract.—*Coates v. Sangston*, 5 Md. 121.

**§ 165. Dismissal or discharge of garnishee before trial.**

**§§ 166-173. Trial of issues between plaintiff and garnishee.**

*Cross-Reference.*

Mandamus to compel vacation of order permitting contest of disclosure, see "Mandamus," § 4.

(a) Plaintiff, alleging that the debt was fraudulently incurred, disaffirmed a note which he held against defendant, and, before it was due, sued on an account for various sums of money had and received, and caused an attachment to issue. The garnishee pleaded nulla bona. The issue against the debtor was first tried, and resulted in a judgment for plaintiff. *Held*, that, on the attachment issue, the open account for money had and received was properly filed with the affidavit of attachment as the voucher of the cause of action.—*Summers v. Oberndorf*, 73 Md. 312, 20 Atl. 1068.

(b) It was not necessary that the account thus filed should specify the date and amount of the several loans for which the note was given.—*Summers v. Oberndorf*, 73 Md. 312, 20 Atl. 1068.

(c) Where there is a conflict in testimony on an issue between the plaintiff and the garnishee, but not a total failure of evidence on the part of the plaintiff, it is proper to submit the question to the jury.—*Odend'hal v. Devlin*, 48 Md. 439.

(d) Garnishees offered in evidence a contract under which defendant had done work for them, and proved that they had paid certain sums to him for such work. *Held*, that prayers that plaintiff could recover from the garnishees "at the rate and valuation of the contract, deducting the cost of completing it," not taking notice of payments made by the garnishees to the debtor, are defective.—*Coates v. Sangston*, 5 Md. 121.

(e) Under a garnishee's plea of nulla bona, evidence of a record and proceedings of insolvency of defendant on his application for the benefit of the insolvent laws, and his

final discharge thereunder from all debts, etc., should be left with the jury to say whether it supported the plea.—*Harding v. Hull*, 5 H. & J. 478.

**§ 174. Judgment against garnishee.**

*Cross-References.*

Effect of judgment and payment or other satisfaction thereof, see post, §§ 235-237.

Effect of judgment for garnishee, see post, § 238.

Arrest of judgment, see "Judgment," § 267.

Effect of reversal of judgment in principal action, see "Appeal and Error," § 1180.

Review by certiorari, see "Certiorari," § 17.

**§ 175.— Nature and essentials in general.**

**§ 176.— Summons to show cause or other notice.**

**§ 177.— Time of rendition.**

(a) A judgment nisi against a garnishee in a case on the appearance docket, where there is no appearance entered for the garnishee, should be entered on the docket by the clerk on the call of the appearance docket, on appearance day, in open court, and in presence of the judge.—*Carrollton Savings & Loan Ass'n v. Kerngood*, 51 Md. 416.

(b) Code 1860, art. 10, § 13, provides that if "neither defendant nor the garnishee, in whose hands the property or credits may be attached, shall appear at the return of the attachment, the court shall and may condemn" the property in the garnishee's hands. *Held*, that, if the garnishee appears at the return of the attachment, judgment of condemnation cannot be then entered.—*Northern Cent. Ry. Co. v. Rider*, 45 Md. 24. (See Code 1911, art. 9, § 12.)

(c) If defendant regularly appear during the term, according to the exigency of the writ, and make defense, no judgment of condemnation should be entered until such defense is fully tried and determined.—*Johnson v. Lemmon*, 37 Md. 336.

**§ 178.— By default.**

(a) Plaintiffs in garnishment consented to a continuance pending a motion to quash the writ. *Held*, that they could not insist on judgment for failure of the garnishee to answer interrogatories during the term of con-

tinuance which had not been filed till that term.—*Laflin & Rand Powder Co v. Baltimore & O. R. Co.*, 63 Md. 76.

(b) If both defendant and garnishee fail to appear at the regular call of the docket, judgment of condemnation nisi may be entered.—*Johnson v. Lemmon*, 37 Md. 336.

§§ 179-184. (See Analysis.)

§ 185.—Entry and record.

(a) Judgments of condemnation nisi, in cases on the appearance docket where there is no appearance entered for the garnishee, should be entered on the docket by the clerk on the call of the appearance docket on appearance day in open court in the presence of the judge.—*Carrollton Savings & Loan Ass'n v. Kerngood*, 51 Md. 416.

(b) A judgment against a garnishee, entered on the docket by the clerk in the clerk's separate office out of the court room, and out of the presence of the judge, and without any authority from him to make the entry, is irregular.—*Carrollton Savings & Loan Ass'n v. Kerngood*, 51 Md. 416.

§ 186.—Amendment and correction.

§ 187.—Opening and vacating.

*Cross-Reference.*

Equitable relief, see "Judgment," §§ 407, 414, 415, 429, 443.

(a) In 1867, a garnishee, having appeared in a suit in the Court of Common Pleas, was laid under rule to plead. No plea was filed, nor were further proceedings taken until 1878, when the stet docket, on which the case had been placed, was called, after notice given several times during the term by the judge. The garnishee was defaulted and judgment entered. *Held*, that the judgment should not be set aside on the ground of irregularity or surprise.—*Gibbons v. Cherry*, 53 Md. 144.

(b) To support a motion to strike off a judgment against a garnishee after the term at which it was entered, there must be clear proof of fraud or surprise.—*Abell v. Simon*, 49 Md. 318.

(c) Where the garnishee has an opportunity to make his defense, but neglects to do so, and judgment is regularly entered against him, he cannot, after the term at

which the judgment was rendered, open the same because of mistake or surprise.—*Abell v. Simon*, 49 Md. 318.

(d) A judgment of condemnation in attachment will not be disturbed at a subsequent term, without clear proof of fraud, surprise, or irregularity.—*Sarlouis v. Firemen's Ins. Co.*, 45 Md. 241.

(e) A writ of attachment against a debtor was served on a garnishee, who was a city collector. The garnishee's testimony was "that the circumstances attending the service led him to believe that the attachment was laid in his hands as such city collector, and not individually"; that, so believing, he did not employ counsel, being informed that the law officers of the city would be advised of the case by the dockets, and would appear; that, "by reason of the attachment having been laid in his hands individually, he was unjustly misled and deprived of a fair opportunity to make his defense"; and that he was not and never had been indebted to the debtor. *Held*, not to furnish sufficient reason for striking out the judgment against the garnishee.—*Anderson v. Graff*, 41 Md. 601.

(f) Where both defendant and garnishee failed to appear at the regular call of the docket, if a judgment be rendered, the same will be vacated on the appearance of another at any time during the term.—*Johnson v. Lemmon*, 37 Md. 336.

(g) Where the garnishee failed, for two years after judgment against him, to appear and object to a clerical error in the writ of attachment, all the other proceedings being regular, a motion by him to strike out the judgment came too late.—*Post v. Bowen*, 85 Md. 232.

(h) Mere ignorance on the part of garnishees of the necessity of appearing in the attachment suit and contesting their liability, in consequence of which judgment has been passed against them without their having interposed certain objections, is not sufficient ground for vacating the judgment. To warrant such relief, clear proof should be made that the garnishees were led to omit making their defense in time by some deceit practiced upon them by the plaintiff.—*Friedenrich v. Moore*, 24 Md. 295.

## §§ 188-190. Execution and enforcement of judgment.

### Cross-References.

Application of general statute of limitations, see "Limitation of Actions," § 34.  
Revival by creditor of judgment held by debtor against garnishee, see "Judgment," § 864.

## § 191. Costs and attorney's fees.

### Cross-References.

In justices' courts, see "Justices of the Peace," § 87.  
Right of jury to assess expenses of garnishee, see "Jury," § 16.

## VII. QUASHING, VACATING, DISSOLUTION, OR ABANDONMENT.

### Cross-References.

Effect of discharge in bankruptcy, see "Bankruptcy," § 43.  
Mandamus to review order, see "Mandamus," § 4.

## § 192. Nature and form of remedy.

## § 193. Grounds for quashing, vacating, or dissolving.

(a) Where it does not appear from the sheriff's return, or any other part of the proceedings, that the principal defendant had notice of the issuing of the garnishment, the proceedings will be quashed.—*Johnson v. Lemmon*, 37 Md. 336.

(b) An omission to issue a declaration or short note with an attachment expressing plaintiff's cause of action, as required by act 1795, c. 56, § 3, may be insisted on by a garnishee as a ground for quashing the attachment, though he may have pleaded thereto and issues are joined on the pleas, since the same is essential to the validity of the attachment.—*Stone v. Magruder*, 10 G. & J. 383, 32 Am. Dec. 177. (See Code, art. 9, § 9.) [Cited and annotated in 51 L. R. A. (N. S.) 599, on right of garnishee to attack judgment against principal defendant for lack of jurisdiction; in 23 L. R. A. (N. S.) 540, on right of other claimants of property to intervene in attachment.]

## § 194. Motions and proceedings thereon.

### Cross-References.

Record for purpose of review, see "Appeal and Error," § 500.  
Right to jury trial, see "Jury," § 16.

(a) A garnishee and claimant, who has elected to try his case before the court on a

motion to quash, may dismiss his motion after the evidence has been partly taken, and file a plea to try the same question before a jury.—*Ferrall v. Farnen*, 67 Md. 76, 8 Atl. 819. (For former opinion withdrawn, see *Same v. Same*, 5 Atl. 622.)

(b) Where a party is summoned as garnishee, and has an opportunity to make his defense, and neglects to do so, and judgment is regularly entered against him, a motion, made after the expiration of the term in which it is rendered, to strike out the judgment on the ground that it was obtained by mistake or surprise, and to quash the execution thereon, will not be entertained.—*Abell v. Simon*, 49 Md. 318.

## § 195. Discharge of garnishment on security.

### Cross-References.

See ante, § 97.  
Liabilities on bonds, see post, § 247.  
Effect of discharge of principal in bankruptcy, see "Bankruptcy," § 431.

(a) In an attachment cause against a non-resident, defendant's appearance and putting in bail does not discharge the garnishee.—*Barr v. Perry*, 3 Gill 813.

(b) The appearance of defendant to an attachment at the trial term, and his giving special bail after the garnishee has pleaded and issue has been joined on such plea, dissolves the attachment; and defendant is not bound by the plea of the garnishee, but may plead de novo.—*Wilson v. Starr*, 1 H. & J. 490.

## § 196. Dissolution by causes subsequent to garnishment.

### Cross-Reference.

Dissolution by adjudication in bankruptcy, see "Bankruptcy," §§ 198-203.

## §§ 197-199. (See Analysis.)

## VIII. CLAIMS BY THIRD PERSONS.

### Cross-References.

As defense by garnishee, see ante, § 132.  
Claim by garnishee as defense to garnishment proceedings, see ante, § 129.  
Remedy by interpleader as bar to equitable relief against judgment, see "Judgment," § 407.  
Rights of assignee of judgment as against garnishment by third person, see "Judgment," § 850.

## §§ 200, 201. (See Analysis.)

**§§ 202-204. Rights of claimants of property or other subject-matter.**

(a) A petition by a creditor of a defendant in garnishment to set aside a judgment against the garnishees on the ground that before the attachment such defendant had assigned petitioner the moneys due him from the garnishees, of which fact they were notified; that they permitted such moneys to be attached and judgment rendered, without notifying petitioner thereof,—should be dismissed, where petitioner, after learning such facts, slept on its rights eight months before filing its petition.—*Lawrence Bank v. Raney & Berger Iron Co.*, 77 Md. 321, 26 Atl. 119.

(b) The claimant of money attached in the hands of a garnishee has the same right to come in and prove his claim that a claimant of specific property has.—*Kean v. Doerner*, 62 Md. 475.

§§ 205-211. (See Analysis.)

**§§ 212-225. Proceedings for establishment and determination of claims.**

*Cross-References.*

Power of state court to enjoin proceedings in federal court, see "Courts," § 507.

Right to jury trial, see "Jury," § 16.

(a) A bill in equity to set aside a mortgage to a trustee is not admissible in an attachment proceeding against the cestui que trust by a creditor for the purpose of holding the fund by garnishment, as against the mortgage, where plaintiff in attachment was not a party to the bill, and it was filed after the attachment suit was begun.—*Stockbridge v. Fahnestock*, 87 Md. 127, 39 Atl. 95; *Allen v. Same*, Id.

**§ 226. Operation and effect of determination.**

**IX. OPERATION AND EFFECT OF GARNISHMENT, JUDGMENT, OR PAYMENT.**

*Cross-References.*

Effect of garnishment as suspending statute of limitations, see "Limitation of Actions," § 105.

Garnishment as stopping running of interest, see "Interest," § 51.

Interpleader by garnishee, see "Interpleader," § 11.

Pendency of garnishment proceedings as defense in action by landlord to recover possession for nonpayment of rent, see "Landlord and Tenant," § 284.

**§ 227. Effect of garnishment as between plaintiff and defendant.**

**§ 228. Effect of garnishment as between plaintiff and garnishee.**

(a) Where a debt is fraudulently contracted, and an attachment is laid in the hands of a garnishee, who has funds of defendants sufficient to pay the claim, plaintiff is entitled to a verdict against the garnishee, although one of the parties has taken the benefit of the insolvent law since said attachment was laid.—*Thomas v. Brown*, 67 Md. 512, 10 Atl. 713.

**§§ 229-231. Effect of garnishment as between defendant and garnishee.**

(a) The mere pendency of attachment against defendant is no defense to an action brought by his creditor for the same debt. To make a plea of attachment a bar, it is necessary that there should have been a judgment of condemnation and execution made.—*Cole v. Flitcraft*, 47 Md. 312.

(b) The fact that the garnishee had a good defense, or that he was clothed with a privilege sufficient to protect him from liability to the attaching creditor, cannot be inquired into, in an independent action, for the purpose of setting aside the judgment or releasing him from its legal effect.—*Groome v. Lewis*, 23 Md. 137, 87 Am. Dec. 563. [Cited and annotated in 59 L. R. A. 386, on garnishment of unliquidated claims.]

(c) The principal defendant in attachment may sue the garnishee on the chose in action attached, before payment or satisfaction on execution, and recover, if the trustee or garnishee does not plead the pending attachment in abatement.—*Brown v. Somerville*, 8 Md. 444. [Cited and annotated in 34 L. R. A. 323, on conclusiveness of prior decisions on subsequent appeals; in 47 L. R. A. 131, 133, on effect of judgment against garnishee to merge or satisfy principal debtor's liability.]

(d) A judgment in a trustee or attachment suit against the garnishee does not extinguish the garnishee's debt to the principal defendant.—*Brown v. Somerville*, 8 Md. 444. [Cited and annotated, see supra.]

(e) An attachment laid in the hands of the maker of a note as garnishee for the debt of an indorsee, followed by a judgment of condemnation, will protect the maker in a subsequent action on the note by a subsequent indorsee receiving the note without notice.—*Somerville v. Brown*, 5 Gill 399.

(f) Where a debt has been recovered by attachment in a foreign court, the recovery is a protection to the debtor, as garnishee, against his original creditor.—*Taylor v. Phelps*, 1 H. & G. 492.

### § 232. Effect of garnishment as between garnishee and third persons.

#### Cross-Reference.

See post, § 234.

(a) Defendant, being indebted to B. on a note, was garnished in an action brought by A. against B. In the meantime B. transferred the note to plaintiff, who brought action thereon. Held, that defendant might plead the pendency of the suit between A. and B., in which he had been garnished, in abatement, but not in bar.—*Brown v. Somerville*, 8 Md. 444. [Cited and annotated, see supra, §§ 229-231.]

(b) Where there was judgment of condemnation in attachment, and the money had been paid to plaintiff's attorney by the garnishee, and the attachment was dissolved and the condemnation struck out, defendant to the original action giving bail, defendant, in an action brought against the garnishee for the use of a third person, to whom he had given an order for the money in the hands of the garnishee before the attachment, cannot recover.—*Guttrus v. Langton*, 3 H. & McH. 178.

### § 233. Effect of delivery of property or payment by garnishee without judgment or order of court.

#### Cross-References.

Delivery to defendant, see ante, § 112.

Payment to defendant, see ante, § 116.

### §§ 234-237. Effect of judgment against garnishee and payment or other satisfaction thereof.

#### Cross-References.

See ante, § 81.

Order for payment into court, see ante, § 157.

Estoppel of principal defendant preventing appeal, see "Appeal and Error," § 158.

#### Annotation.

Payment by bank under garnishment of deposit, to party other than depositor, but of same name.—11 L. R. A. (N. S.) 248, note.

Effect of judgment against garnishee to merge or satisfy liability of principal debtor.—47 L. R. A. 131, note.

(a) A suit was brought by C. against A. as garnishee of B., to whom A. owed five notes of \$1,000 each. C. obtained judgment against B. for \$10,000, and judgment was rendered against A. as garnishee; but, before execution was issued, one of the notes came into the hands of D., plaintiff in this case, who brought suit thereon against A., the maker. While this suit was pending, A. purchased of C. the judgment against B. for \$10,000, giving for it \$2,300. Held, that this purchase was no defense to the suit, as the whole debt was not paid.—*Brown v. Somerville*, 8 Md. 444. [Cited and annotated, see supra, §§ 229-231.]

(b) An attachment laid in the hands of the maker of a note, as garnishee, for the debt of an indorsee, then being the owner and holder of the note, followed by a judgment of condemnation on the attachment, will protect the maker, the garnishee, against a subsequent action, brought on the same note, by a subsequent indorser, receiving the note without notice.—*Somerville v. Brown*, 5 Gill 399.

### § 238. Effect of judgment for garnishee.

#### Annotation.

Judgment in favor of garnishee, as res judicata.—19 L. R. A. (N. S.) 604, note.

## X. LIABILITIES ON BONDS OR UNDERTAKINGS.

#### Cross-Reference.

Defective return of service on garnishee as affecting right to recover on bond, see ante, § 97.

§§ 239-246. (See Analysis.)

§ 247. **Actions.**

(a) In debt on bond conditioned to save a garnishee harmless for paying over the debt, where the plea was non damnificatus a replication setting out the attachment and con-

demnation was good.—*Brooke v. Macne-mara*, 1 H. & McH. 80.

**XI. WRONGFUL GARNISHMENT.**

*Cross-Reference.*

Malicious garnishment, see "Malicious Prosecution," §§ 13, 40, 67.

§§ 248-251. (See Analysis.)

**G A S.\***

*Scope-Note.*

[INCLUDES regulation of the production, supply, and use of gas for illuminating, heating, and like purposes, obtained either from natural sources or by any process of manufacture, whether under franchises granted therefor or directly by municipalities; and rights, powers, duties, and liabilities of gas companies and of municipal corporations in respect of the supply of gas.

[EXCLUDES matters applicable to corporations generally (see "*Corporations*"); powers of municipal corporations to grant and regulate franchises and to make contracts with gas companies (see "*Municipal Corporations*"); exercise of the power of eminent domain (see "*Eminent Domain*"); taxation of gas companies (see "*Taxation*"); and rights and liabilities of owners of lands containing natural gas, gas wells, etc., leases thereof, and contracts relating thereto (see "*Mines and Minerals*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Power to control and regulate.
- § 2. Statutory and municipal regulation in general.
- § 3. Establishment or acquisition of plant by public authorities.
- § 4. Gas companies.
- § 5. — Incorporation and organization.
- § 6. — Franchises, privileges, and powers in general.
- § 7. — Rights in streets and other public places.
- § 8. — Indebtedness, liens, and mortgages.
- § 9. Mains, pipes, and appliances.
- § 10. Licenses and taxes.
- § 11. Inspection and supervision.
- § 12. Supply to municipalities.
- § 13. Supply to private consumers.
- § 14. Charges.
- § 14½. Injuries incident to construction or operation of works in general.
- § 15. Injuries from escape or explosion of gas.
- § 16. — Nature and grounds of liability.
- § 17. — Care required in general.
- § 18. — Defects, acts, or omissions causing injury.
- § 19. — Contributory negligence.
- § 20. — Actions.
- § 21. Injuries to works, mains, pipes or appliances.
- § 22. Penalties for violations of regulations.
- § 23. Offenses incident to production, supply, or use.

\*Annotation: Words and Phrases, same title.

*Cross-References.*

- Act prohibiting waste of natural gas as denying liberty and pursuit of happiness, see "Constitutional Law," § 86.
- Amendment of charter of gas company, see "Corporations," § 38.
- Authority of agent to contract to furnish gas, see "Principal and Agent," § 101.
- Charges for gas, construction of statutes relating to charges in favor of constitutionality thereof, see "Constitutional Law," § 48.
- Charges for gas, regulation of as denial of equal protection of laws, see "Constitutional Law," § 242.
- Charges for gas, regulation of as impairing obligation of contract, see "Constitutional Law," § 135.
- Charges for gas, violation of municipal ordinances regulating charges, see "Municipal Corporations," § 636.
- Charges for gas, violation of penal ordinances regulating charges, see "Municipal Corporations," § 631.
- Concurrent and conflicting jurisdiction of state and federal courts of suit to restrain cutting off of gas connections, see "Courts," § 493.
- Condemnation of property for production and supply of gas as taking for public use, see "Eminent Domain," § 34.
- Continuance of corporate existence of gas company, see "Corporations," § 37.
- Delegation of power of eminent domain to gas companies, see "Eminent Domain," § 10.
- Determination of question of constitutionality of act relating to regulation of gas, see "Constitutional Law," § 47.
- Duty of master in respect to domestic servant working about gas range, see "Master and Servant," § 286.
- Estoppel to question constitutionality of act relating to regulation of gas, see "Constitutional Law," § 43.
- Forcible entry to remove gas meter as tort, see "Torts," § 6.
- Franchises, as constituting contract within constitution, see "Constitutional Law," § 128.
- Franchises, creation of monopoly, see "Monopolies," § 6.
- Franchises, grant in general, see "Franchises," § 2.
- Franchises, impairment of obligation of contract of municipality, see "Constitutional Law," § 121.
- Franchises, limitation on power of city as to duration of franchise granted, see "Municipal Corporations," § 682.
- Franchises, power of city to grant or sell franchise, see "Municipal Corporations," §§ 285, 680, 681.
- Franchises, power of city to impose conditions on granting, see "Municipal Corporations," § 682.
- Franchises, power of county to grant, see "Counties," § 22.
- Franchises, requisites of ordinance granting franchises, see "Municipal Corporations," § 683.
- Franchises, restraining infringement, see "Injunction," § 65.
- Gas as subject of conversion, see "Trove and Conversion," § 2.
- Gas lands, see "Mines and Minerals," § 36.
- Gas plant as nuisance, see "Nuisance," § 6.
- Grant of right to use streets for gas as creating contract within constitution, see "Constitutional Law," § 134.
- Imposition on gas company of cost of changes in location of pipes under city streets as impairing contract rights, see "Constitutional Law," § 128.
- Inhaling, cause of loss within accident insurance policy, see "Insurance," § 458.
- Jurisdiction of federal courts to enjoin enforcement of gas commission's orders as dependent on suit being against state, see "Courts," § 303.
- Jurisdiction of federal courts to protect contract rights of company to supply gas to municipality from impairment, see "Courts," § 282.
- Jurisdiction of federal courts to restrain enforcement of ordinance limiting gas rates as involving denial of equal protection of the laws and deprivation of property without due process of law, see "Courts," § 282.
- Jurisdiction of federal courts to restrain enforcement of rates as dependent on citizenship of parties, see "Courts," § 316.
- Legislative and judicial functions with reference to fixing price of gas, see "Constitutional Law," § 70.
- Liability for injury to passenger from explosion of gas on railroad car, see "Carriers," § 306.
- Liability of gas companies and property to taxation, see "Taxation," § 157.
- Mains and pipes in street or highway as additional servitude, see "Eminent Domain," § 119.
- Mandamus to compel service at rate prescribed by Legislature, see "Mandamus," § 134.
- Mandamus to compel supply of gas to private consumers, see "Mandamus," §§ 3, 133.
- Measure and amount of compensation for appropriation of gas works for public use, see "Eminent Domain," § 126.
- Mining leases, see "Mines and Minerals," §§ 73-81.
- Municipal corporations, assessments for public improvements, see "Municipal Corporations," § 422; damages to gas works from construction of municipal improvements, see "Municipal Corporations," § 393; individual interest of municipal officers in gas plant, see "Municipal Corporations," § 231; injuries to shade trees in streets incident to construction or operation of gas works, see "Municipal Corporations," § 663; lease of gas plant, see "Municipal Corporations," § 224; liability for injuries from explosion of gas in sewers, see "Municipal Corporations," § 832; power of municipal officers to bind successors in making contract for supply of

gas to municipality, see "Municipal Corporations," § 232; power to contract for supply of gas to municipality, see "Municipal Corporations," § 226; power to make improvements in lighting, see "Municipal Corporations," § 272; power to regulate price of gas under guise of exercise of power to abate nuisance, see "Municipal Corporations," § 605; power to transfer option to purchase gas plant, see "Municipal Corporations," § 287; sale of gas plant, see "Municipal Corporations," § 225.

Mutuality of contract for supply of gas, see "Contracts," § 10.

Natural gas as article of commerce, see "Commerce," § 15.

Penalties for violation of regulations, construction of penal statutes, see "Statutes," § 241.

Placing meter and fixtures on premises of consumer as bailment, see "Bailment," § 1.

Prohibiting use of artificial means to increase natural flow of gas as taking property without compensation, see "Eminent Domain," § 2.

Regulation of compressed gas as explosive, see "Explosives," § 1.

Regulation of price of carriers as deprivation of property without due process of

law, see "Constitutional Law," § 298.

Restraining acts by gas company in excess of franchise, see "Injunction," § 67.

Restraining breach of contract to furnish gas, see "Injunction," § 59.

Restraining enforcement of regulations, see "Injunction," § 85.

Right to lay gas mains on railroad right of way, see "Railroads," § 73.

Sale of gas plant and franchises, see "Vendor and Purchaser," § 152.

Sale of gas plant for nonpayment of municipal taxes, see "Municipal Corporations," § 980.

Specific performance of contract by municipality for supply of gas, see "Specific Performance," § 62.

Statutes granting special privileges to gas companies, see "Statutes," § 79.

Subjects and titles of acts relating to gas companies, see "Statutes," § 113.

Supply of gas and electricity, see "Electricity," § 11.

Taxation of gas companies, see "Taxation," § 188.

Usage to charge meter rent as inconsistent with contract for supply of gas, see "Customs and Usages," § 14.

Waste of gas as abatable public nuisance, see "Nuisance," § 80.

### § 1. Power to control and regulate.

### § 2. Statutory and municipal regulation in general.

#### *Cross-References.*

Determination of question of constitutionality, see "Constitutional Law," § 47.

Determination of reasonable use of natural gas, see "Statutes," § 58.

Estoppel to question constitutionality of statutes, see "Constitutional Law," § 43.

Grant of special privileges, see "Statutes," § 79.

Restraining enforcement, see "Injunction," § 85.

#### *Annotation.*

Legislative and municipal control.—29 L. R. A. 342, note.

### § 3. Establishment or acquisition of plant by public authorities.

#### *Cross-References.*

Individual interest of officers, see "Municipal Corporations," § 231.

Lease of plant, see "Municipal Corporations," § 225.

Power of city to transfer option to purchase, see "Municipal Corporations," § 225.

Sale of plant, see "Municipal Corporations," § 225.

### § 4. Gas companies.

#### *Cross-References.*

Amendment of charter, see "Corporations," § 38.

Continuance of corporate existence, see "Corporations," § 37.

Liability to taxation, see "Taxation," § 157.

Restraining breach of contract to furnish gas, see "Injunction," § 59.

### § 5.—Incorporation and organization.

#### *Cross-Reference.*

Subject and titles of acts, see "Statutes," § 113.

### § 6.—Franchises, privileges, and powers in general.

#### *Cross-References.*

Exclusive franchise as monopoly, see "Monopolies," § 6.

Grant of franchise in general, see "Franchises," § 2.

Impairment of obligation of contract of municipality, see "Constitutional Law," § 121.

Limitation on power of city as to duration of franchise granted, see "Municipal Corporations," § 682.

Power of city to grant or sell franchise, see "Municipal Corporations," §§ 285, 680, 681.

Power of county to grant, see "Counties," § 22.

Requisites of ordinance, see "Municipal Corporations," § 683.

(a) Acts 1886, pp. 623, 645, cc. 384, 395 (Pub. Loc. Laws of Baltimore County, art. 3, §§ 114-116), were acts affecting the formation of gas companies in Baltimore City and Baltimore and Anne Arundel counties,



and prohibited the formation of gas companies in those counties, and provided that no gas company chartered in any other county in the state should have the right to lay mains or sell gas in the counties, and to repeal and annul charters for gas companies, save as therein provided. *Held*, that such statutes had no application to the granting of a franchise to an individual.—*Consolidated Gas Co. v. Commissioners of Baltimore County*, 99 Md. 403, 58 Atl. 214.

### § 7.—Rights in streets and other public places.

#### Cross-Reference.

Power of city to impose conditions, see "Municipal Corporations," § 682.

(a) Inasmuch as act 1902, p. 525, c. 368, relative to the granting of franchises for public purposes in Baltimore county, provided, in § 4, that the county commissioners, in granting franchises under the act, should not destroy any vested rights in the streets and highways of Baltimore county, the granting of a franchise under the statute for laying gas pipes, etc., was not objectionable as affecting private rights previously granted to another.—*Consolidated Gas Co. v. Commissioners of Baltimore County*, 99 Md. 403, 58 Atl. 214.

(b) The board of county commissioners of Baltimore county, acting under authority of the general laws, and that vested in them by act 1900, c. 685, p. 1080, and by act 1902, c. 524, p. 764, adopted an order to the effect that after a certain date no water mains or pipes should be laid within the limits of a highway, or any such highway dug up for such purpose, without a permit in writing, signed by the county commissioners. The charter of a gas company, in substance, authorized it to lay pipes under roads, subject to any order that might be passed by the county commissioners for the filling up and repaving of any road, etc. *Held*, that an injunction would not lie, restraining the gas company from excavating a highway and constructing mains therein without having obtained a permit from the county commissioners.—*Consolidated Gas Co. v. Baltimore County Com'rs*, 98 Md. 689, 57 Atl. 29.

### § 8.—Indebtedness, liens, and mortgages.

#### Cross-Reference.

Jurisdiction to grant equitable relief against judgment, see "Judgment," § 455.

### § 9. Mains, pipes, and appliances.

### § 10. Licenses and taxes.

### § 11. Inspection and supervision.

(a) Under Balto. City Code 1903, Ordinances, art. 28, § 10, providing for an inspection of new meters put in use by any gas company, and directing the payment of a fee for such inspection; § 11, providing that no meter shall be set, unless sealed, as required by the preceding section; and § 12, requiring a reinspection of discontinued meters, without fixing any fee—the inspection fee is limited to new meters, and no charge can be imposed for reinspection.—*City of Baltimore v. Consolidated Gas Co.*, 99 Md. 540, 58 Atl. 216. (See Balto. City Code 1906, Ordinances, art. 20, §§ 9-11.)

### § 12. Supply to municipalities.

#### Cross-References.

Jurisdiction of federal court to protect from impairment contract rights of company to supply gas to a municipality, see "Courts," § 282.

Mandamus to compel, see "Mandamus," § 133.

Power of municipal officers to bind successors, see "Municipal Corporations," § 232.

Power to contract, see "Municipal Corporations," § 226.

Specific enforcement of contract by municipality, see "Specific Performance," § 62.

Usage to charge meter rent as inconsistent with contract, see "Customs and Usages," § 14.

### § 13. Supply to private consumers.

#### Cross-References.

Concurrent and conflicting jurisdiction of state and federal courts of suit to restrain cutting off connections, see "Courts," § 493.

Mandamus to compel, see "Mandamus," §§ 3, 133.

Misjoinder of causes of action, see "Action," § 38.

Mutuality of contract, see "Contracts," § 10.

#### Annotation.

Right to stop supply of gas for default in payment.—14 L. R. A. 669, note.

(a) Where a company manufacturing governors to regulate the pressure of gas placed

them, without the authority of the gas company, on its meters, it is no defense to a requirement to take them out that the company is not in control of the premises of the consumers; there being no proof that the consumers would oppose it.—*Blondell v. Consolidated Gas Co.*, 89 Md. 732, 43 Atl. 817, 46 L. R. A. 187; *Consolidated Gas Co. v. Blondell*, Id.

(b) The secretary of a gas company told a person about to introduce a governor, to regulate the pressure of gas, that the company had no objections; that it would make no objections, and could not if it would; that, if the consumer wanted a governor, it could not prevent him from having one. *Held*, not to show consent of the company to attaching the governors to its meters and connections.—*Blondell v. Consolidated Gas Co.*, 89 Md. 732, 43 Atl. 817, 46 L. R. A. 187; *Consolidated Gas Co. v. Blondell*, Id.

(c) Mere acquiescence by a gas company in the attachment by others of governors to its meters, to regulate the pressure of gas, does not constitute laches preventing it from ordering them taken out; such use of governors increasing the danger to life and property, and the evil being a growing one.—*Blondell v. Consolidated Gas Co.*, 89 Md. 732, 43 Atl. 817, 46 L. R. A. 187; *Consolidated Gas Co. v. Blondell*, Id.

(d) A consumer or owner of a house, owning the gas pipes therein, has a right to attach to the end of such pipe nearest the gas company's meter a governor for regulating the pressure of gas, under reasonable regulations by the gas company and the company putting in the governors.—*Blondell v. Consolidated Gas Co.*, 89 Md. 732, 43 Atl. 817, 46 L. R. A. 187; *Consolidated Gas Co. v. Blondell*, Id.

(e) Where, pursuant to act 1876, c. 356, applicable to Baltimore city, requiring a gas company to place and keep in proper working order a meter on the premises of each consumer, a company places on such premises a meter owned by it, and also lead pipes for connections, which are removed with the meter, it is responsible for damages resulting from failure to perform its duty of keeping such meter and connections in repair, and hence is entitled to the sole

control thereof, and to prevent others from using them for any other purpose.—*Blondell v. Consolidated Gas Co.*, 89 Md. 732, 43 Atl. 817, 46 L. R. A. 187; *Consolidated Gas Co. v. Blondell*, Id. (See Balto. City Rev. Charter, § 541.)

(f) The owner of two houses which were separated by an intermediate estate belonging to a stranger made separate contracts with the only gas company of the place to furnish gas for each house. *Held*, that the company had no right to cut the gas off from one of the houses for a failure to pay for the gas furnished to the other.—*Gas-Light Co. v. Colliday*, 25 Md. 1. [Cited and annotated in 14 L. R. A. 669, on right to stop water or gas supply for default in payment; in 15 L. R. A. 322, on compulsory service by party whose business it is to serve public; in 22 L. R. A. (N. S.) 590, on loss of profits as element of damages for cutting off of heat, water, or gas.]

## § 14. Charges.

### Cross-References.

Construction of statute in favor of constitutionality, see "Constitutional Law," § 48.

Jurisdiction of federal courts to restrain enforcement of rates as dependent on citizenship of parties, see "Courts," § 316.

Jurisdiction of federal court to restrain enforcement of ordinance limiting gas rates as involving denial of equal protection of the law and deprivation of property without due process of law, see "Courts," § 282.

Legislative and judicial functions with reference to fixing price of gas, see "Constitutional Law," § 70.

Mandamus to compel service at rate prescribed by Legislature, see "Mandamus," § 134.

Regulation of charges as denial of equal protection of laws, see "Constitutional Law," § 242.

Regulation of charges as impairment of obligation of contract, see "Constitutional Law," § 135.

Restraining acts in excess of franchise, see "Injunction," § 67.

Violation of municipal ordinances, see "Municipal Corporations," § 636.

Violation of penal ordinances, see "Municipal Corporations," § 631.

### Annotation.

Power of municipality apart from contract to regulate rates to be charged by gas company.—33 L. R. A. (N. S.) 759, note.

Right of gas company to exact security of consumer or require payment of rentals in advance.—19 L. R. A. (N. S.) 693; 31 L. R. A. (N. S.) 319, notes.

Right of water or light company to discriminate between consumers as to rate.—27 L. R. A. (N. S.) 674, note.

Recovery back of excessive payments made to company.—18 L. R. A. (N. S.) 126, note.

Power of municipality to fix gas rates as an incident of its power to authorize the laying of gas mains.—18 L. R. A. (N. S.) 1197, note.

Legislative regulation of rates charged for gas.—33 L. R. A. 181, note.

### § 14½. Injuries incident to construction or operation of works in general.

#### Cross-References.

Injury to shade trees in streets, see "Municipal Corporations," § 663.

Pleading cause of death from breach of contract to furnish gas, see "Death," § 47.

Work of independent contractor, see "Master and Servant," § 317.

### § 15. Injuries from escape or explosion of gas.

#### Cross-References.

Acts of servant for which master is liable, see "Master and Servant," § 302.

Liability of city for injuries from explosion of gas in sewer, see "Municipal Corporations," § 832.

Work of independent contractor, see "Master and Servant," § 318, 319.

#### Annotation.

Liability of gas company for negligence in escape or explosion of gas.—29 L. R. A. 337; 32 L. R. A. (N. S.) 809, notes.

Liability for injury caused by escape of gas stored on one's premises.—15 L. R. A. (N. S.) 537, note.

### § 16.— Nature and grounds of liability.

(a) Where a gas company, supplying gas for city lamps, negligently failed in its duty to make necessary repairs in its service pipes, connecting lamps with its gas main, whereby gas escaped from a leak in a service pipe, causing injuries to persons, it was responsible to the persons injured, though the ownership of the service pipes was in the city.—*Consolidated Gas Co. v. Connor*, 114 Md. 140, 78 Atl. 725. [Cited and annotated in 32 L. R. A. (N. S.) 825, on liability of gas company for negligence in escape or explosion.]

(b) The failure of a gas company operating as an agent of a city under contract for the illumination of the city streets to perform its duty to keep service pipes from its mains to the city lamps in repair involves an affirmative element of negligence amount-

ing to misfeasance, and it is liable to any one injured in consequence thereof, for an agent who undertakes and enters on the execution of a particular work, must use reasonable care in the manner of executing it, and he cannot by abandoning its execution, exempt himself from liability to any person suffering injury by reason of his act, because that act is not "nonfeasance," but is "misfeasance."—*Consolidated Gas Co. v. Connor*, 114 Md. 140, 78 Atl. 725. [Cited and annotated, see supra.]

(c) A gas company contracted to supply gas to city lamps, and to make the necessary connections with city lamps. The city by ordinance committed to the superintendent of lamps and lighting the duty of providing for the lighting, cleaning, and repairing of the city lamps, and for the furnishing, erection, repairing, and removal of street lamps and lamp pillars. The superintendent contracted with a third person for the lighting, extinguishing, and cleaning of the lamps, and the equipment, maintenance, and repair of the lamps, lanterns, and equipment. Held, that the city did not assume for itself, nor engage to delegate the duty of keeping in order the connecting pipes, but that duty was left with the company installing the connections for the transmission of gas which it had contracted to deliver to the lamps, and it was liable for injuries resulting from its negligent failure to keep the service pipes in proper repair.—*Consolidated Gas Co. v. Connor*, 114 Md. 140, 78 Atl. 725. [Cited and annotated, see supra.]

### § 17.— Care required in general.

(a) A gas company does not discharge its duty to provide against the escape of gas by assuming, without knowing, that a leak proceeds from one source when, in fact, it proceeds from a different source, discoverable on proper investigation.—*Consolidated Gas Co. v. Connor*, 114 Md. 140, 78 Atl. 725. [Cited and annotated, see supra, § 16.]

(b) A gas company must take every reasonable precaution to confine the gas furnished its customers within the channels where it may be employed with safety, and where a company has undertaken to repair service pipes which it has established for its own profit, the measure of its liability to

those affected by any negligence is equal to that of its duty and opportunity to keep the system in repair, without reference to the technical question of the ownership of the pipes.—*Consolidated Gas Co. v. Connor*, 114 Md. 140, 78 Atl. 725. [Cited and annotated, see supra, § 16.]

(c) The fact that a gas company makes no examination of its pipes on premises into which they run raises no presumption of negligence in the absence of any notice of cause for examination.—*State v. Consolidated Gas Co.*, 85 Md. 637, 37 Atl. 263; *Brady v. Same*, Id. [Cited and annotated in 32 L. R. A. (N. S.) 817, on liability of gas company for negligence in escape or explosion.]

(d) Where a gas company is notified that quantities of gas are escaping into a building, it cannot discharge the duty to use reasonable diligence to discover and stop the leak by acting on the assumption that the leak proceeds from one source, when in fact it proceeds from a totally different source, which could have been discovered by a proper inspection.—*Consolidated Gas Co. v. Crocker*, 82 Md. 113, 33 Atl. 423, 31 L. R. A. 785. [Cited and annotated in 32 L. R. A. (N. S.) 818, 825, on liability of gas company for negligence in escape or explosion.]

#### § 18.— Defects, acts, or omissions causing injury.

(a) Where vacant premises are injured by leakage and consequent explosion of gas, the explosion being immediately occasioned by a policeman, in searching for the leak, presenting a lighted candle at a cellar opening, the leakage is the efficient and predominant cause of the injury, so as to charge the gas company.—*Consolidated Gas Co. v. Getty*, 96 Md. 683, 54 Atl. 660, 94 Am. St. Rep. 603. [Cited and annotated in 32 L. R. A. (N. S.) 819, 820, 821, on liability of gas company for negligence in escape or explosion.]

#### § 19.— Contributory negligence.

##### Cross-Reference.

Imputed negligence, see "Negligence," § 89.

(a) It is not negligence contributing to the injury to a vacant house by a leakage and consequent explosion of gas, that the owner and his agent left the premises without inspection for almost a month.—*Consolidated*

*Gas Co. v. Getty*, 96 Md. 683, 54 Atl. 660, 94 Am. St. Rep. 603. [Cited and annotated, see supra, § 18.]

(b) Evidence as to whether a stopcock on the top of an upright pipe was a dangerous method of shutting off gas was properly rejected where the leak alleged to have caused the injury complained of was at another point in the pipe.—*State v. Consolidated Gas Co.*, 85 Md. 637, 37 Atl. 203; *Brady v. Same*, Id. [Cited and annotated, see supra, § 17.]

(c) The act of taking a lighted lamp into a cellar known by the person entering to be filled with escaped gas is not, as a matter of law, such contributory negligence as will preclude recovery for injuries from an explosion occurring over 10 minutes later.—*Consolidated Gas Co. v. Crocker*, 82 Md. 113, 33 Atl. 423, 31 L. R. A. 785. [Cited and annotated, see supra, § 17.]

#### § 20.— Actions.

##### Cross-Reference.

Nature of action as on contract or in tort, see "Action," § 27.

##### Annotation.

Evidence as to negligence in the escape and explosion of gas.—29 L. R. A. 342, note.

Questions for, and instructions to, jury on liability for escape and explosion of gas.—29 L. R. A. 354, note.

(a) Whether a gas company negligently failed to keep in repair the pipes through which it furnished gas, thereby negligently permitting the escape of gas, resulting in personal injuries, held, under the evidence, for the jury.—*Consolidated Gas Co. v. Connor*, 114 Md. 140, 78 Atl. 725. [Cited and annotated in 32 L. R. A. (N. S.) 825, on liability of gas company for negligence in escape or explosion.]

(b) A gas company contracted to supply gas for city lamps and to make connections from its pipes to lamps erected by the city, for a flat rate covering the cost of laying the service and making connections from the gas main to the lamps. The contract made no provision for the transfer of title to the materials used in the work, but stipulated for the payment to the company of the cost of any change in "its service or connections" made at the request of the city. In the bills rendered by the company to the city for making connections, the charge was

merely for connecting service to the gas lamps at the flat rate. The city and the company treated the contract as requiring the company to repair the service pipes. When a lamp was removed to a new location the old service pipe was not taken up but a new connection was made for which the city paid the contract rate. The city disclaimed ownership of the pipes. *Held*, that the ownership by the city of the service pipes was not so conclusively shown as to justify a withdrawal from the jury of a case for personal injuries by gas escaping from a service pipe connected with a city lamp, on the ground that the city owned the pipe.—*Consolidated Gas Co. v. Connor*, 114 Md. 140, 78 Atl. 725. [Cited and annotated, see supra.]

(c) Where the declaration in an action against a gas company for personal injuries alleged that defendant was negligent in permitting gas to escape from "its pipes" it was broad enough to cover not only the theory of ownership of the pipes by the company, but the theory of its assumption of their control and repair, and hence an instruction authorizing a verdict against defendant on finding that by reason of its failure to use due care the gas supplied by it leaked from its pipes or from pipes, which in the operation of its business, it used and assumed the duty of repairing, was not objectionable as not in accordance with the declaration.—*Consolidated Gas Co. v. Connor*, 114 Md. 140, 78 Atl. 725. [Cited and annotated, see supra.]

(d) Evidence in an action against a gas company for damages occasioned a vacant house by a leak and consequent explosion *held* to render for the jury the question of the company's negligence in failing by proper inspection to discover the leak.—*Consolidated Gas Co. v. Getty*, 96 Md. 683, 54 Atl. 660, 94 Am. St. Rep. 603. [Cited and annotated, see supra, § 18.]

(e) An upright pipe, screwed to a gas-supply pipe entering the cellar of premises tenanted by plaintiff, stood supported by the wall. Plaintiff, who did not use gas, had caused coal to be dumped around and against said pipe. There had never been any escape of gas till the day plaintiff's daughter was found dead in the cellar, with the gas es-

caping at a leak in the joint, but the physician who examined the body could not say what caused her death. *Held*, that an instruction for defendant gas company was proper.—*State v. Consolidated Gas Co.*, 85 Md. 637, 37 Atl. 263; *Brady v. Same*, Id. [Cited and annotated, see supra, § 17.]

## § 21. Injuries to works, mains, pipes, or appliances.

### Cross-Reference.

Damages from construction of municipal improvements, see "Municipal Corporations," § 393.

(a) Since unauthorized interference with a gas meter and fixtures placed by a gas company in the property of a consumer leads to danger to life and property, equity will exercise jurisdiction to restrain it.—*Blondell v. Consolidated Gas Co.*, 89 Md. 732, 43 Atl. 817, 46 L. R. A. 187; *Consolidated Gas Co. v. Blondell*, Id.

## § 22. Penalties for violations of regulations.

### Cross-Reference.

Construction of penal statutes, see "Statutes," § 241.

## § 23. Offenses incident to production, supply, or use.

### Cross-Reference.

Evidence of other offenses in prosecution for using natural gas in flambeau lights, see "Criminal Law," § 373.

## GASOLINE.\*

### Cross-References.

As explosive, see "Explosives."  
Keeping or use prohibited in insurance policy, see "Insurance," § 326.

## GASOLINE BOATS.

### Cross-References.

See "Shipping," § 17.  
Statutory regulations, certainty, see "Statutes," § 47.

## GAS METERS.

### Cross-Reference.

See "Gas."

## GAS RANGES.

### Cross-Reference.

Duty of master in respect to domestic servant, see "Master and Servant," § 286.

Explosion, liability of gas company for injuries, see "Gas," § 20.

\*Annotation: Words and Phrases, same title.

**GAS WELLS.\****Cross-References.*

See "Mines and Minerals."  
Offenses in connection with operation, see  
"Gas," § 23.

**GATES.\****Cross-References.*

Across highway, as destroying public easement, see "Highways," § 79.  
As interrupting adverse use of land as highway, see "Highways," § 6.  
As obstructions to use of easements, see "Easements," § 58.  
At railroad crossings, see "Railroads," §§ 243, 307, 308.  
At railroad crossings, master's duty in respect to servant, see "Master and Servant," § 112.  
Proceedings to abolish gates erected across highway, see "Highways," § 157.  
Right of abutting owner to erect gates on highway, see "Highways," § 89.  
Toll gates, see "Turnpikes and Toll Roads," § 42.

**GAUGER.***Cross-Reference.*

See "Internal Revenue," § 22.

**GEESE.***Cross-Reference.*

Liability of railroad company for killing, see "Railroads," § 428.

**GELDING.\****Cross-Reference.*

Sufficiency of indictment describing horse as a sorrel gelding, see "Animals," § 65.

**GENEALOGY.***Cross-References.*

Evidence of pedigree, birth and relationship, see "Evidence," §§ 285-297.  
Rules of descent of property, see "Descent and Distribution," §§ 20-51.

**GENERAL ACTS.\****Cross-Reference.*

See "Statutes," §§ 66-104.

**GENERAL AGENT.\****Cross-References.*

See "Principal and Agent."  
Of insurance company, see "Insurance," § 88.

**GENERAL APPEARANCE.\****Cross-Reference.*

See "Appearance," §§ 8-10, 24.

**GENERAL AVERAGE.\****Cross-References.*

See "Shipping," §§ 186-202.  
Rights and liabilities of insurers, see "Insurance," § 477.

**GENERAL BEQUESTS AND DEVICES.\****Cross-Reference.*

See "Wills," §§ 756, 807, 812.

**GENERAL CHALLENGE.***Cross-References.*

See "Grand Jury," § 17; "Jury," §§ 114-121.

**GENERAL DAMAGES.\****Cross-Reference.*

See "Damages," § 5.

**GENERAL DEMURRER.\****Cross-Reference.*

See "Pleading," § 205.

**GENERAL DENIAL.\****Cross-References.*

See "Pleading," §§ 115, 116, 123, 382.

**GENERAL DEPOSITS.\****Cross-Reference.*

See "Banks and Banking," § 153.

**GENERAL EXCEPTIONS.***Cross-References.*

See "Trial," § 103.  
Sufficiency for purpose of review, see "Appeal and Error," § 273; "Criminal Law," § 1059.

**GENERAL GUARANTY.\****Cross-Reference.*

See "Guaranty," § 38.

**GENERAL ISSUE.\****Cross-References.*

See "Pleading," §§ 115, 116, 382.  
Evidence admissible under general issue, see "Assumpsit, Action of," § 23.

**GENERAL LAND OFFICE.***Cross-Reference.*

See "Public Lands," §§ 94-109.

**GENERAL LAWS.\****Cross-References.*

See "Statutes," §§ 66-104.  
State laws as rules of decision in federal courts, see "Courts," § 372.

**GENERAL LEGACIES.\****Cross-Reference.*

See "Wills," §§ 756, 807, 812.

**GENERAL LETTER OF CREDIT.\****Cross-Reference.*

See "Banks and Banking," § 191.

\*Annotation: Words and Phrases, same title.

**GENERAL MANAGER.\****Cross-References.*

Of corporations in general, see "Corporations," § 303.

Powers of general manager of railroad, see "Railroads," § 17.

Power to represent corporation in general, see "Corporations," §§ 397-433.

**GENERAL OBJECTIONS.\****Cross-References.*

See "Criminal Law," § 695; "Trial," § 82. Sufficiency for purpose of review, see "Appeal and Error," § 231; "Criminal Law," § 1043.

**GENERAL ORDERS.\****Cross-Reference.*

Rules of court, see "Courts," §§ 78-86.

**GENERAL RECEIVERS.\****Cross-Reference.*

See "Deposits in Court."

**GENERAL REPUTATION.\****Cross-References.*

As evidence of character in general, see "Criminal Law," § 379; "Evidence," §§ 106, 152.

**GENERAL RESTRAINT OF TRADE.\****Cross-References.*

Contracts invalid at common law, see "Contracts," § 117.

Statutes against monopolies or trusts, see "Monopolies," §§ 8-31.

**GENERAL RULES.\****Cross-References.*

Of court, see "Courts," §§ 78-86.

**GENERAL STATUTES.\****Cross-Reference.*

See "Statutes," §§ 66-104.

**GENERAL TERMS.\****Cross-Reference.*

Of court, see "Courts," § 63.

**GENERAL TRAVERSE.***Cross-Reference.*

See "Pleading," §§ 115, 116, 123, 382.

**GENERAL USAGE.***Cross-Reference.*

See "Customs and Usages."

**GENERAL VERDICT.\****Cross-Reference.*

See "Trial," §§ 318-345.

**GENERAL WARRANTY.\****Cross-Reference.*

See "Covenants," §§ 47, 67, 100.

**GEOGRAPHICAL FACTS.***Cross-Reference.*

Judicial notice of, see "Evidence," § 10.

**GEOGRAPHY.***Cross-References.*

Geographical names, subjects of ownership, see "Trade-Marks and Trade-Names," § 9.

Judicial notice as to geographical facts, see "Criminal Law," § 304; "Evidence," § 10.

**GERMAN EMPIRE.***Cross-Reference.*

Jurisdiction of consuls under treaty with German Empire, see "Ambassadors and Consuls," § 6.

**GERMAN LANGUAGE.***Cross-Reference.*

Libel in German language, see "Libel and Slander," § 85.

Publication of process and notices in German paper, see "Newspapers," § 3.

Testimony in, see "Witnesses," § 231.

**GERRYMANDER.\****Cross-References.*

Change of boundaries of election districts, see "Elections," § 48.

Change of boundaries of wards and precincts, see "Municipal Corporations," § 40.

**GESTATION.\****Cross-Reference.*

Period as evidence in bastardy proceedings, see "Bastards," § 6.

**GESTURES.***Cross-Reference.*

As provocation justifying assault and battery, see "Assault and Battery," § 66.

**GIFT ENTERPRISE.***Cross-Reference.*

See "Lotteries."

\*Annotation: Words and Phrases, same title.

## GIFTS.\*

*Scope-Note.*

[INCLUDES voluntary transfers of property without consideration, whether executed or to take effect on the death of the giver, and acceptance and revocation thereof; nature, requisites, validity, incidents, operation, and effect of such transfers; evidence relating thereto; and rights and liabilities of parties thereto as between themselves and as to others in general.

[EXCLUDES effect of particular personal or confidential relations (see "*Husband and Wife*"; "*Parent and Child*"; "*Guardian and Ward*"; "*Executors and Administrators*"; "*Attorney and Client*"); effect of want of consideration as to rights of creditors and subsequent purchasers (see "*Fraudulent Conveyances*"); deeds of gift (see "*Deeds*"); and taxation of gifts (see "*Taxation*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Inter Vivos.**

- § 1. Nature of gift in general.
- § 2. What law governs.
- § 3. Statutory provisions.
- § 4. Requisites in general.
- § 5. Gifts distinguished from other transactions.
- § 6. Power to make gift.
- § 7. Property which may be subject of gift.
- § 8. — Real property and interests therein.
- § 9. — Personal property in general.
- § 10. — Rights of action.
- § 11. Time of taking effect.
- § 12. Parties.
- § 13. — Capacity to make gift.
- § 14. — Capacity to take.
- § 15. Intent.
- § 16. Necessity for execution.
- § 17. Delivery in general.
- § 18. — Necessity.
- § 19. — Actual delivery to donee.
- § 20. — Property in possession of donee.
- § 21. — To third person for donee.
- § 22. — Constructive delivery.
- § 23. — Retention of possession by donor for donee.
- § 24. Acceptance in general.
- § 25. Parol gift of land.
- § 26. Necessity of notarial or public act.
- § 27. Gift of legacy or distributive share of estate.
- § 28. Gifts of rights of action in general.
- § 29. Gifts of corporate stock.
- § 30. Gifts of deposits in bank.
- § 31. Gifts of negotiable instruments.
- § 32. Gifts of donor's note or check.
- § 33. Forgiveness of debt of donee.
- § 34. Qualified or conditional gifts.

\*Annotation: Words and Phrases, same title.



**I. Inter Vivos—Continued.**

- § 35. Validity.
- § 36. — In general.
- § 37. — Mistake and misrepresentation.
- § 38. — Fraud, duress, and undue influence.
- § 39. — Illegality.
- § 40. Ratification.
- § 41. Revocation and rescission.
- § 42. Operation and effect.
- § 43. — As to parties.
- § 44. — As to bona fide purchasers.
- § 45. Pleading.
- § 46. Evidence.
- § 47. — Presumptions and burden of proof.
- § 48. — Admissibility.
- § 49. — Weight and sufficiency.
- § 50. Questions for jury.
- § 51. Instructions.
- § 52. Verdict and findings.

**II. Causa Mortis.**

- § 53. Requisites in general.
- § 54. Gifts causa mortis distinguished from other transactions.
- § 55. — Gifts inter vivos.
- § 56. Property which may be subject of gift.
- § 57. Time of taking effect.
- § 58. Parties.
- § 59. Expectation of death.
- § 60. Intent.
- § 61. Necessity for execution.
- § 62. Delivery in general.
- § 63. Acceptance in general.
- § 64. Gifts of rights of action in general.
- § 65. Gifts of corporate stock.
- § 66. Gifts of deposits in bank.
- § 67. Gifts of donor's promissory note or check.
- § 68. Forgiveness of debt of donee.
- § 69. Particular qualifications or conditions.
- § 70. Validity.
- § 71. — In general.
- § 72. — Mistake.
- § 74. Revocation and rescission.
- § 75. — Survival of donor.
- § 76. — Agreement or act of parties.
- § 77. Operation and effect.
- § 78. Pleading.
- § 79. Evidence.
- § 80. — Presumptions and burden of proof.
- § 81. — Admissibility.
- § 82. — Weight and sufficiency.
- § 83. Questions for jury.
- § 84. Instructions.

*Cross-References.*

- Admissions by donors, see "Evidence," § 233.
- Advancement as distinguished from gifts, see "Descent and Distribution," §§ 93-118.
- Adverse possession as between donor and donee, see "Adverse Possession," § 64.
- As inducement to purchase commodities as lottery, see "Lotteries," § 26.
- Assignments in general, see "Assignments."
- Authority of president to make gift of corporation's property, see "Corporations," § 404.
- Best and secondary evidence, see "Evidence," § 158.
- Between husband and wife, see "Husband and Wife," §§ 49½, 49¾.
- Between parent and child, see "Parent and Child," § 9.
- By executor or administrator, see "Executors and Administrators," § 107.
- By guardian, see "Guardian and Ward," § 57.
- By husband in fraud of wife, see "Husband and Wife," § 6.
- By testator as ademption of legacy, see "Wills," § 766.
- By testator to devisee or legatee as advancement, see "Wills," § 759.
- By towns, see "Towns," § 46.
- By trustee, see "Trusts," § 223.
- Charitable gifts, see "Charities."
- Compelling transfer on books of stock given to another, see "Corporations," § 133.
- Death of donor as revoking authority of agent to deliver gift, see "Principal and Agent," § 43.
- Deed of gift, see "Deeds," §§ 15, 17, 61.
- From parents to illegitimate children, see "Bastards," § 98.
- Gift as incident to novation, see "Novation," § 6.
- Gift of husband as affecting dower right of donor's wife, see "Dower," § 44.
- Gifts in fraud of creditors, see "Fraudulent Conveyances," §§ 138, 172.
- Gifts in fraud of right of inheritance, see "Descent and Distribution," § 69.
- Gift to evade taxation, see "Taxation," § 108.
- Inducement of confession by, see "Criminal Law," § 520.
- Inheritance from donee, see "Descent and Distribution," § 16.
- Interest on gift, see "Interest," § 15.
- Liability for corporate debts and acts of holders of "bonus" stock or stock issued as gratuity, see "Corporations," § 243.
- Liability of donor on covenant of warranty, see "Covenants," § 108.
- Limitation on power of municipality to make donations to individuals, see "Municipal Corporations," § 871.
- Of Indian lands, see "Indians," § 15.
- Of infringing articles as premiums with other goods as constituting infringement, see "Patents," § 260.
- Of intoxicating liquors as criminal offense, see "Intoxicating Liquors," §§ 156, 158-161, 163, 215.
- Of separate property of married woman, see "Husband and Wife," § 184.
- Of slaves, see "Slaves," § 7.
- Of state land certificate, see "Public Lands," § 178.
- Of weapons, see "Weapons," § 4.
- Payment, as gift, of consideration for conveyance to another, as creating resulting trust, see "Trusts," § 82.
- Payment distinguished from gift, see "Payment," §§ 1, 73.
- Possession and improvement of real property under oral gift as sufficient to satisfy statute of frauds, see "Frauds, Statute of," § 137.
- Power of board of levee commissioners to donate lands to private corporation, see "Levees," § 9.
- Power of corporation to give away goods, see "Corporations," § 439.
- Property disposed of by gift as assets of donor's estate, see "Executors and Administrators," § 56.
- Purchaser from grantee as bona fide purchaser, see "Vendor and Purchaser," § 239.
- Regulations of gifts of intoxicating liquors, see "Intoxicating Liquors," § 119.
- Reversion of land on death of donee without issue, see "Descent and Distribution," § 16.
- Right of corporation to take fee simple in land by gift, see "Corporations," § 438.
- Right of donee of insurance policy to keep same in force, see "Insurance," § 219.
- Right of donee to plead statute of frauds, see "Frauds, Statute of," § 143.
- Sale of subject of gift for payment of debts of deceased donor, see "Executors and Administrators," § 329.
- Specific performance, see "Specific Performance," § 85.
- Subsequent bona fide purchasers from vendor in deed of gift, see "Vendor and Purchaser," § 239.
- Testamentary restriction on completed gift, see "Wills," § 6.
- To colleges and universities, see "Colleges and Universities," §§ 6, 12.
- To husband or wife as community or separate property, see "Husband and Wife," § 250.
- To married woman as separate property, see "Husband and Wife," § 116.
- To towns, see "Towns," § 35.
- Validity of deed of gift executed on Sunday, see "Sunday," § 11.
- Validity of prior against subsequent deed of gift, see "Vendor and Purchaser," § 236.
- Will distinguished from gift causa mortis, see "Wills," § 90.

## I. INTER VIVOS.

### Cross-References.

As incident to novation, see "Novation," § 6.

Deed of gift, see "Deeds," §§ 15, 17.

Interest on gift, see "Interest," § 15.

§§ 1-4. (See Analysis.)

### § 5. Gifts distinguished from other transactions.

#### Cross-References.

Advancements, see "Descent and Distribution," §§ 93-118.

Evidence as to whether transaction constitutes payment or gift, see "Payment," § 73.

(a) P. drew a check in favor of his partner, R., indorsing on the stub in his check book: "No. 4,274. October 1, 1884. R. Loaned \$3,800." P. drew all firm checks, and used the same book for his private account. He afterwards said to several persons that he had given R. the money; that there was no use in lending it to him; while to others he spoke of it as a loan. In making a schedule of his investments, etc., he included the amount as due from R. The balance due R. at the time was applied towards its payment. *Held*, that it was a loan, and not a gift.—*Snowden v. Reid*, 67 Md. 130, 8 Atl. 661, 10 Atl. 175. [Cited and annotated in 20 L. R. A. 786, on accord and satisfaction by part payment.]

### § 6. Power to make gift.

#### Cross-References.

As between husband and wife, see "Husband and Wife," §§ 49½, 49¾.

### §§ 7-10. Property which may be subject of gift.

(a) That which is incapable of delivery cannot be the subject of a donation.—*Pennington v. Gittings*, 2 G. & J. 208. [Cited and annotated in 29 L. R. A. (N. S.) 169, on necessity of actual delivery of certificate to complete gift of stock.]

### § 11. Time of taking effect.

### §§ 12-14. Parties.

#### Cross-References.

Husband to wife, see "Husband and Wife," § 49½.

Wife to husband, see "Husband and Wife," § 49¾.

#### Annotation.

Who takes under gift to "husband," "wife," or "widow."—33 L. R. A. (N. S.) 816, note.

(a) A donor who knows that a gift inter vivos operates to divest him of all title to the property, and to vest it in the donee, possesses sufficient capacity to make a gift.—*Stouffer v. Wolfkill*, 114 Md. 603, 80 Atl. 300.

§§ 15, 16. (See Analysis.)

### § 17. Delivery in general.

#### Cross-References.

Of gift by husband to wife, see "Husband and Wife," § 49½.

Possession and improvement of real property under oral gift as sufficient to satisfy statute of frauds, see "Frauds, Statute of," § 137.

### § 18.—Necessity.

(a) A decedent wrote and signed on the back of a business letter addressed to a man and his wife the following, addressed to the wife: "After my death you are to have forty thousand dollars. This you are to have, will or no will. Take care of this until my death." *Held*, a valid testamentary gift of personalty.—*Byers v. Hoppe*, 61 Md. 206, 48 Am. Rep. 89. [Cited and annotated in 15 L. R. A. 636, 17 L. R. A. (N. S.) 1127, on letter as will.]

(b) If the donor retains dominion over the subject of the gift, and there remains to him a locus penitentiae, there cannot be a perfect and legal donation; and that which is not a valid and perfect gift at law cannot be made good in equity.—*Hitch v. Davis*, 3 Md. Ch. 266; *Pennington v. Gittings*, 2 G. & J. 208. [Cited and annotated, see supra, §§ 7-10.]

(c) In order to constitute a valid gift, the donor must part with the legal power and dominion over the property.—*Pennington v. Gittings*, 2 G. & J. 208. [Cited and annotated, see supra, §§ 7-10.] *Linthicum v. Linthicum*, 2 Md. Ch. 21.

### § 19.—Actual delivery to donee.

#### Annotation.

Necessity of actual delivery of certificate to complete gift of shares of stock.—29 L. R. A. (N. S.) 166, note.

(a) It is necessary to the validity of a donatio inter vivos that a delivery should be made according to the manner in which the subject of the gift is susceptible of being delivered.—*Hitch v. Davis*, 3 Md. Ch. 266.

**§ 20.— Property in possession of donee.**

**§ 21.— To third person for donee.**

(a) The delivery of bonds by a father to a stranger, with orders to deliver them to the obligor's sons, in whose favor they ran, in case the obligor died without a will, is not a delivery to the obligees; but, being revocable during his lifetime, by the making of a will by the father, they create no debt until his decease intestate, and then only as testamentary papers.—*Carey v. Dennis*, 13 Md. 1.

(b) Where the father of a child, as its natural guardian, was in possession of a slave at the time of a gift of the slave by the owner to the child, it was held sufficient possession to make the gift valid, and passed the property to the child without further delivery by the donor.—*Sanderson's Ex'rs v. Marks*, 1 H. & G. 252.

(c) While a negro slave was in possession of A., the master of the slave verbally gave it to B., the daughter of C., then an infant 4 years old, and left it in the possession of C. for the use of B.; and C. kept possession of it for the benefit of B. Held, that such verbal gift, under the circumstances, was sufficient to transfer the property to B. without further delivery.—*Sprigg v. Presly*, 3 H. & J. 493.

**§ 22.— Constructive delivery.**

*Annotation.*

Transfer of key to receptacle as delivery of possession sustaining gift of contents.—40 L. R. A. (N. S.) 901, note.

**§ 23.— Retention of possession by donor for donee.**

*Annotation.*

Retention or resumption of possession by donor as affecting gift.—32 L. R. A. (N. S.) 219, note.

**§ 24. Acceptance in general.**

*Cross-Reference.*

Of gift by husband to wife, see "Husband and Wife," § 49½.

**§ 25. Parol gift of land.**

*Cross-Reference.*

Taking parol gift out of statute of frauds, see "Frauds, Statute of," § 137.

(a) When a gift has led to the expenditure of money or labor on the land given in making permanent improvements of considerable extent, the gift becomes irrevocable in equity

as it would operate a fraud on the donee to allow the donor to avoid the performance of his undertaking.—*Hardesty v. Richardson*, 44 Md. 617, 22 Am. Rep. 57. [Cited and annotated in 53 L. R. A. 344, on right to compensation for bona fide improvements on land under oral contract or gift.]

**§ 26. Necessity of notarial or public act.**

**§ 27. Gift of legacy or distributive share of estate.**

(a) Where a surviving husband, to whom his wife by will made no bequest or devise, is entitled under act 1898, c. 331, to a one-third interest in the wife's personal estate, and is found to be a debtor to the estate for money loaned to him by the wife, and admits the debt, asserts no claim or objection to the distribution of the estate in accordance with the will, and on request is permitted to keep the amount of the indebtedness during his lifetime, there is no such transfer of his interest in the fund represented by the debt as to operate as a perfected gift.—*Barroll v. Brice*, 115 Md. 498, 80 Atl. 1035. (See Code, art. 93, §§ 121, 317.)

**§ 28. Gifts of rights of action in general.**

*Cross-References.*

See post, § 31.

Compelling transfer on books of stock given to another, see "Corporations," § 133.

Right of donee of insurance policy to keep same in force, see "Insurance," § 219.

(a) A husband, owning securities, rented a safety deposit box in his own and his wife's names, to be entered severally; the agreement reciting that they held as "joint tenants, the survivor \* \* \* to have access thereto in case of death of either." He deposited the securities therein, and gave one key to his wife, saying, "Here is your key to the safe deposit box," and retained the other. Held, not a completed gift to the wife.—*Bauernschmidt v. Bauernschmidt*, 97 Md. 35, 54 Atl. 637; *Baltimore Trust & Guarantee Co. v. Same*, Id. [Cited and annotated in 40 L. R. A. (N. S.) 906, on transfer of key to receptacle as sustaining gift of contents.]

**§ 29. Gifts of corporate stock.**

*Annotation.*

Necessity of actual delivery of certificate to complete gift of shares of stock.—29 L. R. A. (N. S.) 166, note.

Gift of corporate stock: necessity of writing.—2 L. R. A. (N. S.) 806, note.

Donation to corporation of shares of its own stock.—18 L. R. A. 255, note.

(a) The owner of a brewery organized, for business convenience, a corporation, dividing a portion of the stock gratuitously among his children. One son dying, he gave his portion to the others. He gave 30 shares to his wife, and later canceled the certificate, and issued one for 140 shares to himself and her as tenants by the entirety. He was treated by all as the owner of the 140 shares, voted them, and on a sale of the property transferred them to the purchaser, and exercised exclusive control over the proceeds. *Held*, that there was no completed gift to the wife.—*Bauernschmidt v. Bauernschmidt*, 97 Md. 35, 54 Atl. 637; *Baltimore Trust & Guarantee Co. v. Same*, Id. [Cited and annotated, see *supra*, § 28.]

(b) An order to transfer stock standing on a corporation's books to another as a gift cannot be enforced, after the donor's death.—*Baltimore Retort & Fire Brick Co. v. Mali*, 65 Md. 93, 3 Atl. 286, 57 Am. Rep. 304. [Cited and annotated in 29 L. R. A. (N. S.) 169, on necessity of actual delivery of certificate to complete gift of stock.]

(c) The delivery by a father to his child of a certificate that the father was entitled to certain bank shares, transferable at the bank only, indorsed by the father, at the same time stating to the child that he gave her the same, does not constitute a valid gift of the shares, as there was no delivery of the subject of the gift.—*Pennington v. Gittings*, 2 G. & J. 208. [Cited and annotated in 29 L. R. A. (N. S.) 169, on necessity of actual delivery of certificate to complete gift of stock.]

### § 30. Gifts of deposits in bank.

#### Cross-References.

From husband to wife, see "Husband and Wife," § 49½.

From wife to husband, see "Husband and Wife," § 49¾.

#### Annotation.

Effect of delivery of order for savings account without the book to complete a gift of the account.—L. R. A. 1915B, 396, note.

(a) Where complainant, a widow of sound mind, when over 70 years of age had certain savings bank deposits transferred to herself in trust for herself and her grand-

daughter, "joint owners subject to the order of either, the balance at the death of either to belong to the survivor," such disposition was legally valid and not subject to rescission by complainant thereafter because she changed her intention with reference to disposition of the fund.—*Mulfinger v. Mulfinger*, 114 Md. 463, 79 Atl. 1089.

(b) To make a gift inter vivos of a deposit in a savings bank, there must be an actual transfer of all right and dominion over the deposit by the donor and an acceptance by the donee or some competent person for him, and the gift must transfer the property at once; and, until the gift is thus made perfect, the donor may make any other disposition of the property.—*Jones v. Crisp*, 109 Md. 30, 71 Atl. 515.

(c) A depositor in a savings bank who caused the deposit to be entered in the book of deposit in her name, and, in case of her death, payable to another, does not thereby make a gift inter vivos of the deposit, as she retains the absolute control over the deposit, and the transfer of the deposit has reference to a future time.—*Jones v. Crisp*, 109 Md. 30, 71 Atl. 515.

(d) A depositor in a savings bank caused the deposit to be entered in her name, and, in case of her death, payable to a third person. Subsequently she delivered the book of deposit to the latter, who was in possession thereof at the time of the depositor's death. A rule of the bank required the production of the book on the withdrawal of any part of the deposit. The depositor after the deposit declared that all that the third person would have to do to obtain the deposit was to take the book down to the bank and have it transferred. *Held*, not to show a valid gift inter vivos of the deposit.—*Jones v. Crisp*, 109 Md. 30, 71 Atl. 515.

(e) The subsequent addition of the words "joint owners" to an entry in a savings bank pass book made "payable to the order of either, or the survivor," the depositor retaining the book, is not a sufficient delivery to the person other than the depositor whose name is on the book, so as to be irrevocable.—*Whalen v. Milholland*, 89 Md. 199, 43 Atl. 45, 44 L. R. A. 208. [Cited and annotated

in 52 L. R. A. 849, on partnership books of account as evidence; in 12 L. R. A. (N. S.) 355, on deposit in joint names as gift to codepositor.]

(f) The addition of the words "joint owners" to an entry on a savings bank pass book of the name of the depositor and another followed by the words: "Payable to the order of either, or the survivor," where not at the request of the depositor, but because the bank had adopted that form, and not brought to the notice of the depositor, who could not read, is not binding on him.—*Whalen v. Milholland*, 89 Md. 199, 43 Atl. 45, 44 L. R. A. 208. [Cited and annotated, see supra.]

(g) Where the owner of a savings bank deposit puts the same in the name of himself and another as joint owners, with intent to give the deposit to such other, and delivers the pass book to such person with that intent, the gift is complete.—*Whalen v. Milholland*, 89 Md. 199, 43 Atl. 45, 44 L. R. A. 208. [Cited and annotated, see supra.]

(h) An entry on a savings bank pass book of the name of another, with that of the depositor, and the words, "Payable to the order of either, or the survivor,"—the depositor retaining the book,—is not a sufficient delivery to the person whose name is thus put on the book to put the gift beyond the depositor's power to recall.—*Whalen v. Milholland*, 89 Md. 199, 43 Atl. 45, 44 L. R. A. 208. [Cited and annotated, see supra.]

(i) In an action to decide the ownership of an account at a savings bank, the entry in the pass book read: "M. and J., joint owners. Payable to the order of either, or the survivor." It appeared that the former was the aunt of the latter; that she was a domestic in a family who were in the habit, when opening an account in a savings bank, to put a second name on the bank book as a matter of convenience in case of illness; that the deposit was the bulk of her savings for years; that the niece never obtained possession of the pass book until after her aunt's death; that the aunt made a will, which would be of no effect if she intended to give the deposit in the bank to her niece. *Held*, that there was no such delivery as is necessary to make a valid gift inter vivos.—*Gorman v. Gorman*, 87 Md. 338, 39 Atl. 1038.

[Cited and annotated in 12 L. R. A. (N. S.) 357, on deposit in joint names as gift to codepositor.]

(j) Where a husband makes a written statement in his bank pass book that he gives all the money credited to him in the book to his wife, but continues to draw on his own account from the same fund, there is no delivery sufficient to constitute a valid gift of the fund.—*Dougherty v. Moore*, 71 Md. 248, 18 Atl. 35, 17 Am. St. Rep. 524. [Cited and annotated in 21 L. R. A. 695, on undelivered written transfer or assignment of property as gift; in 31 L. R. A. 454, on joint savings bank accounts.]

(k) S., being ill, gave C. a written order on a savings bank for the payment to C. of a deposit standing in the bank in the name of S. A memorandum was subjoined, that "the book must be sent with this order." The book being in the possession of G., S. at the same time gave C. a written order for it. C. presented the order for the money to the bank, without the book, and the bank refused to pay it without the production of the book. S. died three months later, at a different place. *Held*, in an action by C. against the administrator of S. for the deposit, it not appearing that C. ever had the book or ever tried to get it, there could be no recovery.—*Conser v. Snowden*, 54 Md. 175, 39 Am. Rep. 368. [Cited and annotated in 22 L. R. A. (N. S.) 568, on gift by delivery or order for savings account without the book.]

(l) H., contemplating a departure from home for the benefit of his health, made a deposit in a savings bank to the credit of himself and his mother, and the survivor of them, subject to the order of either. Afterwards he went again to the bank, accompanied by his sister M., and had the name of his mother erased, and that of M. substituted, so that the account was made to stand in the books: "14,096,—H., M., and the survivor of them, subject to the order of either." About a month later, he drew out a portion of the deposit. He died within four months, and thereupon M. obtained the bank book from his trunk, where it had been constantly kept, and drew from the bank the entire balance, with the interest thereon. H. left no property other than this money, and by his will made sundry pecuniary bequests.

*Held*, that the transaction did not constitute a gift inter vivos or causa mortis.—*Taylor v. Henry*, 48 Md. 550, 30 Am. Rep. 486. [Cited and annotated in 51 L. R. A. (N. S.) 1209, on creation of trust in personalty by parol; in 31 L. R. A. 454, on joint savings bank accounts; in 12 L. R. A. (N. S.) 355, on deposit in joint names as gift to codepositor; in 12 L. R. A. (N. S.) 549, on sufficiency of declaration to establish voluntary trust where settlor retains title.]

(m) The only mode in which money could be changed from one person's account to another in a savings bank was "by a payment of the one account and a new deposit in another account." An account was to the order of "James Cannon, subject to his order, or to the order of Mary E. Cannon," his daughter; and after his death she claimed that he had given her the book of deposit with the money credited therein, to be held by her in trust for herself and her brothers and sisters. *Held*, that the delivery of the book of deposit did not constitute a delivery of the money.—*Murray v. Cannon*, 41 Md. 466. [Cited and annotated in 31 L. R. A. 455, on joint savings bank accounts; in 12 L. R. A. (N. S.) 355, on deposit in joint names as gift to codepositor.]

(n) When moneys have been deposited in a bank to the credit of a minor, and the depositor, although retaining control of the fund under a regulation of the bank which permits him to do so, declares, at the time of making the deposit, that it is made for the use and benefit of such minor, the gift is perfected, and the money so deposited becomes the property of such minor.—*Gardner v. Merritt*, 32 Md. 78, 3 Am. Rep. 115.

### § 31. Gifts of negotiable instruments.

#### Cross-Reference.

As incident to novation, see "Novation," § 6.

#### Annotation.

May a promissory note executed by a parent to a child be the subject of a valid gift by the former to the latter.—7 L. R. A. (N. S.) 156, note.

(a) A mother assigned to her daughter the amount due on a single bill before its maturity, by a writing not under seal, in which the consideration for the gift was expressed to be "natural affection for my daughter, and one dollar to me paid by her." By the writing, the assignor further reserved to herself and to her own use the interest on

the bill "as it falls due, or so much thereof as I may receive during my natural life." The assignment was never delivered, but a copy of it was given to the debtor, who, one year after the maturity of his bill, took it up by executing an obligation to the order of the assignor at five years after date. Upon the death of the assignee, two years thereafter, the assignor assigned and delivered the obligation to another daughter. *Held*, the first assignment was not a gift completed.—*Cox v. Hill*, 6 Md. 274; *Cox v. Sprigg*, Id. [Cited and annotated in 12 L. R. A. (N. S.) 547, on sufficiency of declaration to establish voluntary trust where settlor retains title.]

(b) A. delivered to B. a note against C., directing him to collect it and apply the amount received for the benefit of D., and died some weeks afterwards. *Held*, that this did not amount to a gift inter vivos.—*Thompson v. Dorsey*, 4 Md. Ch. 149. [Cited and annotated in 42 L. R. A. (N. S.) 1116, on infants: education or instruction as necessary.]

(c) A promissory note, payable to the testator's order, not indorsed by him, but which he retained during life, and which after his death was found in possession of his executor, was claimed by his daughter as a gift upon the ground that he had given it to her, but had retained it in his possession as her agent to collect the interest thereon for her, which during his life he regularly paid over to her. *Held*, that, whatever the testator intended, he had not executed his intention according to the manner prescribed by law to perfect a parol gift, not having parted with his legal power and dominion of the subject of the gift, and that it was therefore void in law, and equity would not make it good.—*Hitch v. Davis*, 3 Md. Ch. 266. (See Code, art. 21, § 43.)

### § 32. Gifts of donor's note or check.

#### Annotation.

Check as subject of gift by maker.—27 L. R. A. (N. S.) 308, note.

Gift inter vivos.—26 L. R. A. 305, note.

(a) A promissory note given by the maker therein to the payee, to whom he is not indebted at the time, cannot be enforced, as against the maker's estate, after his death.—*De Grange v. De Grange*, 96 Md. 609, 54

Atl. 663. [Cited and annotated in 27 L. R. A. (N. S.) 309, on check or note as subject of gift by maker.]

### § 33. Forgiveness of debt of donee.

(a) A father loaned \$30,000 to his two sons, who were partners, which was credited to him on their books, and on which they paid interest. Some years afterwards he directed that each be credited with one-half the amount, and thereafter no interest was paid; nor was any note or other obligations taken from either. On the death of one of the sons, the other was appointed administrator, and, under his father's directions, he withheld the sum thus credited to his brother from the inventory of his estate, and retained it in the business, paying interest thereon to decedent's children. No claim against the deceased son's estate for this sum was ever made by the father. On the death of the father, the surviving partner divided among the deceased brother's children the \$15,000, which had been carried on the books as the "uninvested estate" of his brother, giving credit to each on his books for their respective shares. Held, that the \$15,000 originally credited was intended as a gift.—*Albert v. Albert*, 74 Md. 526, 22 Atl. 408.

### § 34. Qualified or conditional gifts.

(a) When the donor of personal property declared in the deed of gift that she should not be debarred or prevented from holding, using, or enjoying the property granted, and all profits arising therefrom during her natural life, this reservation does not qualify the absolute character of the grant except only so far as to enable the donor to use either the subject granted, or its increase during her life, though the donor remained in possession till her death.—*Hope v. Hutchins*, 9 G. & J. 77.

### §§ 35-39. Validity.

#### Cross-Reference.

Of gifts as between husband and wife, see "Husband and Wife," §§ 49½, 49¾.

#### Annotation.

Validity of gift to unincorporated charity.—32 L. R. A. 625, note.

(a) Where a donee, by virtue of his relation to the donor, is able to exercise a dominion over the donor, the court will annul

the gift, unless the donee shows that the transaction was a righteous one, and that the gift was the free and deliberate act of the donor.—*Stouffer v. Wolfkill*, 114 Md. 603, 80 Atl. 300.

(b) There being no fraud, and the donor being of sound mind and having acted voluntarily, the gift will not be set aside because he changed his mind, or his act appeared absurd or improvident.—*Simpson v. League*, 110 Md. 286, 72 Atl. 1109; *League v. Simpson*, Id.

(c) A gift from a principal to an agent which is the result of the uninfluenced and intelligent act of the donor is not void merely because the donor did not have independent advice, though gifts procured by agents are closely scrutinized, and the donee must show that the donor was of sound mind, competent to transact the business, and that he understood the matter and needed no other advice.—*Zimmerman v. Frushour*, 108 Md. 115, 69 Atl. 796.

(d) A voluntary gift by a capable donor, in pursuance of a long-cherished purpose, to a favorite nephew, whom he had raised from childhood, and with whom he had lived on the most intimate and affectionate terms, negatives the suspicion of fraud and undue influence.—*Eakle v. Reynolds*, 54 Md. 305. [Cited and annotated in 16 L. R. A. (N. S.) 1096, on independent advice as condition of valid gift inter vivos between parties in confidential relation.]

### § 40. Ratification.

### § 41. Revocation and rescission.

#### Cross-Reference.

Right to other relief on failure to establish grounds for rescission, see "Equity," § 38.

#### Annotation.

Retention or resumption of possession by donor as affecting gift.—32 L. R. A. (N. S.) 219, note.

(a) A father loaned \$30,000 to his two sons, who were partners, which was credited to him on their books, and on which they paid interest. Some years afterwards he directed that each be credited with one-half the amount, and thereafter no interest was paid, nor was any note or other obligation taken from either. On the death of one of the sons the other was appointed administrator, and, under his father's directions, he with-



held the sum thus credited to his brother from the inventory of his estate, and retained it in the business, paying interest thereon to decedent's children. No claim against the deceased son's estate for this sum was ever made by the father. On the death of the father the surviving partner divided among the deceased brother's children the \$15,000, which had been carried on the books as the "uninvested estate" of his brother, giving credit to each on his books for their respective shares. *Held*, that the \$15,000 originally credited was intended as a gift, and could not be revoked by the father after the son's death.—*Albert v. Albert*, 74 Md. 526, 22 Atl. 408.

(b) The courts will not lend their aid to a donor or assignor, in a case where the gift or assignment has been consummated by possession, to recover back what the donee or assignee has received or collected.—*McNulty v. Cooper*, 3 G. & J. 214.

#### §§ 42-44. Operation and effect.

##### Cross-References.

Adverse possession as between donor and donee, see "Adverse Possession," § 64.  
Gift by husband as affecting dower right of donor's wife, see "Dower," § 44.  
Gifts in fraud of creditors, see "Fraudulent Conveyances," § 172.  
Of gift by husband to wife, see "Husband and Wife," § 49½.  
Of gift by wife to husband, see "Husband and Wife," § 49¼.

##### Annotation.

Does donor's expectation that donee will allow him to share in the benefit of the property raise an implied trust to that effect.—24 L. R. A. (N. S.) 1043, note.  
Effect of receipt of gratuity to mitigate damages for personal injury.—67 L. R. A. 90, note.

(a) A bill of sale, the consideration for which was love and affection, was not recorded as required by statute. *Held*, that it was valid as against the donor and all claiming under her.—*Dorsey v. Smithson*, 6 H. & J. 61. (See Code, art. 21, §§ 43, 47.) [Cited and annotated in 50 L. R. A. (N. S.) 322, on right of personal representative to avoid conveyance by decedent in fraud of creditors.]

#### § 45. Pleading.

#### § 46. Evidence.

##### Cross-References.

Testimony as to gift by person since deceased, see "Witnesses," § 159.

Testimony as to transactions with persons since deceased, see "Witnesses," §§ 144, 172.

#### § 47.—Presumptions and burden of proof.

##### Cross-References.

Gifts causa mortis, see post, § 80.  
Gifts by husband to wife, see "Husband and Wife," § 49½.  
Of gift from wife to husband, see "Husband and Wife," § 49¼.

##### Annotation.

Presumption and burden of proof as to undue influence respecting gifts inter vivos from parent to child.—35 L. R. A. (N. S.) 944, note.

Degree of proof necessary to establish parol gift of real estate.—9 L. R. A. (N. S.) 508, note.

(a) Where fiduciary relations existed between the parties to a gift, the donee has the burden of upholding the gift.—*Simpson v. League*, 110 Md. 286, 72 Atl. 1109; *League v. Simpson*, Id.

(b) A gift from a mother to her eldest son, who at the time is acting as her agent in attending to her business generally, is prima facie void; and the burden is on him, in an action by her to set aside the same as procured through the exercise of undue influence, to establish that it was the free, voluntary, unbiased act of the grantor.—*Reed v. Reed*, 101 Md. 138, 60 Atl. 621. [Cited and annotated in 35 L. R. A. (N. S.) 952, on presumption and burden of proof as to undue influence respecting gifts inter vivos from parent to child.]

(c) In the absence of mental incapacity on the part of the mother, or fraudulent conduct or confidential relations on the part of the son, the mere fact of the existence of the parental and filial relation does not raise a presumption against the validity of a gift of money by the mother to the son.—*Kennedy v. McCann*, 101 Md. 643, 61 Atl. 625. [Cited and annotated in 35 L. R. A. (N. S.) 946, on presumptions and burden of proof as to undue influence respecting gifts inter vivos from parent to child.]

(d) A voluntary conveyance of property by a parent to a child is not presumed to be invalid, unless a confidential relation between them is shown to exist sufficient to give the child dominion over the parent.—*Bauer v. Bauer*, 82 Md. 241, 33 Atl. 643. [Cited and annotated in 35 L. R. A. (N. S.) 957, on presumption and burden of proof as to undue influence respecting gifts inter vivos from parent to child.]

(e) A gift obtained by a person standing in confidential relation to the donor is prima facie void, and the burden is thrown on the donee to establish to the satisfaction of the court that such gift was the free, voluntary, unbiased act of the donor.—*Todd v. Grove*, 33 Md. 188. [Cited and annotated in 16 L. R. A. (N. S.) 1093, on independent advice as condition of valid gift inter vivos between parties in confidential relation.]

(f) Actual delivery of a gift may be inferred from facts and circumstances, and need not be proved by witnesses who saw it made.—*Hitch v. Davis*, 3 Md. Ch. 266.

(g) In a replevin suit for negroes, it was proved that the plaintiff was the defendant's son-in-law; that the negroes were born in the defendant's possession, and had always continued in her possession; that the defendant had made admissions tending to show that the negroes were the plaintiff's, and had paid him hire for them, and at another time had stated to the plaintiff that she had given them to her daughter, the plaintiff's wife, conditionally. Held, that, if plaintiff's title rested upon a gift merely, the proof of an express delivery was necessary, under the statute.—*Isaac v. Williams*, 3 Gill 278.

#### § 48.—Admissibility.

##### Cross-References.

Admissions by donees as evidence to impeach gift, see "Evidence," § 233.  
Competency of husband and wife as witnesses, see "Witnesses," § 188.  
Declarations, see "Evidence," §§ 269, 273, 278.  
Gift by husband to wife, see "Husband and Wife," § 49½.  
Hearsay evidence, see "Evidence," § 317.  
Res gestæ, see "Evidence," § 119.

(a) In determining the validity of a mere gift, without substantial consideration, by an aged and ignorant person, of almost her entire estate, the court will consider, not only the condition of the donor at the time of the gift, and the circumstances, but the donor's previous life, habits, and relations to others, so as to ascertain the natural or probable objects of her bounty, and especially to discover any settled scheme of disposal of her estate.—*Simpson v. League*, 110 Md. 286, 72 Atl. 1109; *League v. Simpson*, Id.

#### § 49.—Weight and sufficiency.

##### Cross-References.

Proof of gifts causa mortis, see post, § 82.  
Declarations and admissions, see "Evidence," §§ 265, 313.  
Gift by husband to wife, see "Husband and Wife," § 49½.  
Gift by wife to husband, see "Husband and Wife," § 49¾.

(a) Evidence held to show that a donor possessed mental capacity to make a gift inter vivos.—*Stouffer v. Wolfkill*, 114 Md. 603, 80 Atl. 300.

(b) Evidence held to show that a gift by a donor to a donee able, by virtue of the relations existing between the parties, to exercise a dominion over him, was the free and deliberate act of the donor essential to sustain the gift.—*Stouffer v. Wolfkill*, 114 Md. 603, 80 Atl. 300.

(c) A mere gift, without substantial consideration, by an aged and ignorant person, of almost her entire estate, will not be upheld unless it clearly appear that the donor had the requisite legal capacity, and acted freely and without restraint.—*Simpson v. League*, 110 Md. 286, 72 Atl. 1109; *League v. Simpson*, Id.

(d) Evidence held to show that a transaction between a principal and his agent was not a loan, but a gift from the principal to the agent.—*Zimmerman v. Frushour*, 108 Md. 115, 69 Atl. 796.

(e) Evidence held to show that a gift made by a principal to his agent was made while the principal was of sound mind and competent to transact the business, and that he understood the matter and needed no independent advice, rendering the gift valid.—*Zimmerman v. Frushour*, 108 Md. 115, 69 Atl. 796.

(f) Evidence held to show that gifts made by a parent to children were not procured by fraud or undue influence, but were made to compensate the children for services rendered to the parent, authorizing a decree that the property was the absolute property of the children.—*McCabe v. Brosenne*, 107 Md. 490, 69 Atl. 259; *Stansfield v. Same*, Id. [Cited and annotated in 26 L. R. A. (N. S.) 1051, on gift to one spouse by parent of other as advancement or ademption.]

(g) Evidence examined, and held insufficient to show that a gift deed from a mother to her eldest son was obtained by the exercise of undue influence.—*Reed v. Reed*, 101 Md. 138, 60 Atl. 621. [Cited and annotated, see *supra*, § 47.]

(h) In support of a parol gift of a house by a decedent to his grandson, whom he had put therein, the only testimony was that of his mother, aunt, and wife. The first said that decedent told her he would give the home to her son, and that he had given the house to him. At the same time she said he asked her if he could keep it in repair and pay taxes. His aunt said that he merely told her that he had fixed his grandson very nicely, and had given him the house, and claimant's wife was asked whether her husband could pay the taxes and keep the house in order. Evidence of decedent's opportunity to have made a deed if he had so desired was undisputed. The widow of decedent, who was with him when the gift was claimed to have been made, said that decedent allowed his grandson to occupy the house so that it might not be idle, and because he promised to look after other houses of decedent in connection therewith. The so-called permanent improvements claimed to have been made on the strength of the alleged gift amounted to only \$74, and were mostly for ordinary tenant's repairs. Held, that the evidence was not sufficiently clear, definite, and conclusive to establish a gift.—*Polk v. Clark*, 92 Md. 372, 48 Atl. 67. [Cited and annotated in 9 L. R. A. (N. S.) 511, on degree of proof necessary to establish parol gift of realty.]

(i) Ten witnesses testified that plaintiff's father had stated that he had given the land in question to plaintiff, and that plaintiff fixed it up to suit himself. Plaintiff had no deed of the land. He paid more than \$1,100 to improve it. His mother and other members of his family testified that they never heard of such gift; that the father always spoke of the property as his own; and that he used a stable on the land for keeping cows and a horse, and kept hay in the loft. Held, sufficient to establish a gift to the son.—*Loney v. Loney*, 86 Md. 652, 38 Atl. 1071. [Cited and annotated in 9 L. R. A. (N. S.) 509, on degree of proof necessary to establish parol gift of realty.]

(j) In partition against H. and wife by other heirs of their deceased ancestor, such defendants offered evidence of the possession and improvement of the land with the knowledge and consent of such ancestor. Held, that evidence of witnesses who testified that the ancestor had said in the presence of H.'s wife that he had given the land to her, that she need not be afraid to build on it, because it was hers, and other evidence of the same tenor, was sufficient to support a decree excepting such land from partition.—*Haines v. Haines*, 6 Md. 435. [Cited and annotated in 32 L. R. A. 597, on validity of transactions as to expectancy between heir and ancestor; in 53 L. R. A. 344, on right to compensation for bona fide improvements on land under oral contract or gift.]

### § 50. Questions for jury.

(a) In a replevin suit for negroes, it was proved that the plaintiff was the defendant's son-in-law; that the negroes were born in the defendant's possession, and had always continued in her possession; that the defendant had made admissions tending to show that the negroes were the plaintiff's and had paid him hire for them, and at another time had stated to the plaintiff that she had given them to her daughter, the plaintiff's wife, conditionally. Held, that it should be left to the jury to say whether the plaintiff's title rested upon a gift or otherwise.—*Isaac v. Williams*, 3 Gill 278.

### § 51. Instructions.

(a) Where, in a replevin suit for negroes by A. against B., it appeared that B. had had possession of the negroes, but had paid hire for them to A., and there was also evidence tending to show a gift by B. to A., it was held that it was error for the court to instruct the jury on the hypothesis that the payment of hire was intended as a substitute for the actual delivery required by the statute in case of a gift; there being no evidence of such intention, or that the defendant claimed merely under a gift.—*Isaac v. Williams*, 3 Gill 278.

### § 52. Verdict and findings.

## II. CAUSA MORTIS.

### Cross-References.

Between husband and wife, see "Husband and Wife," § 49½.

Deposit of deed for delivery on death of grantor, see "Deeds," § 61.

**§ 53. Requisites in general.**

**§ 54. Gifts causa mortis distinguished from other transactions.**

*Cross-Reference.*

Will distinguished from gift causa mortis, see "Wills," § 90.

*Annotation.*

Gift causa mortis.—26 L. R. A. 305, note.

**§ 55.— Gifts inter vivos.**

*Cross-Reference.*

Transaction which is neither a gift inter vivos nor causa mortis, see ante, § 4.

**§ 56. Property which may be subject to gift.**

(a) The sealed bond of a third person may be the subject of a donatio causa mortis.—*Waring v. Edmonds*, 11 Md. 424.

(b) A promissory note to the payee or order, is not the subject of a donatio mortis causa by the payee.—*Bradley v. Hunt*, 5 G. & J. 54, 23 Am. Dec. 597.

**§ 57. Time of taking effect.**

**§ 58. Parties.**

**§ 59. Expectation of death.**

(a) To render valid a gift mortis causa, the thing given must be delivered with a view of the death of a donor, and with the condition, either expressed or implied, that the gift shall take effect only on the death of the donor by the disease from which he is then suffering.—*Conser v. Snowden*, 54 Md. 175, 39 Am. Rep. 368. [Cited and annotated in 22 L. R. A. (N. S.) 568, on gift by delivery or order for savings account without the book.]

**§ 60. Intent.**

**§ 61. Necessity for execution.**

**§ 62. Delivery in general.**

*Annotation.*

Sufficiency of constructive delivery to sustain gift causa mortis.—18 L. R. A. 170, note.

(a) There is no difference between the legal essentials of delivery in a gift mortis causa and one inter vivos.—*Conser v. Snowden*, 54 Md. 175, 39 Am. Rep. 368. [Cited and annotated, see supra, § 59.]

(b) A. delivered to B. a note against C. directing him to collect it and apply the amount received for the benefit of D., and died some weeks afterwards. *Held*, that this

did not amount to a gift inter vivos or causa mortis.—*Thompson v. Dorsey*, 4 Md. Ch. 149.

(c) It is necessary to the validity of a donatio mortis causa that a delivery should be made according to the manner in which the subject of the gift is susceptible of being delivered.—*Hitch v. Davis*, 3 Md. Ch. 266; *Pennington v. Gittings*, 2 G. & J. 208; *Linthicum v. Linthicum*, 2 Md. Ch. 21.

(d) To constitute a donatio mortis causa, the gift should be full and complete at the time, passing from the donor the legal power and dominion over the thing intended to be given, and leaving nothing to be done by him or his executor to perfect it.—*Bradley v. Hunt*, 5 G. & J. 54, 23 Am. Dec. 597; *Pennington v. Gittings*, 2 G. & J. 208; *Linthicum v. Linthicum*, 2 Md. Ch. 21.

(e) A donatio mortis causa cannot be by mere parol, but a delivery of the thing intended to be given is essential to the perfection of the gift.—*Bradley v. Hunt*, 5 G. & J. 54, 23 Am. Dec. 597; *Pennington v. Gittings*, 2 G. & J. 208; *Linthicum v. Linthicum*, 2 Md. Ch. 21.

**§§ 63-65. (See Analysis.)**

**§ 66. Gifts of deposits in bank.**

(a) Delivery of a bank book to donee, together with other means to effect the transfer showing decedent's intent to make a gift and the donee's acceptance thereof, *held* to constitute an effective executed gift.—*Frentz v. Schwarze*, 122 Md. 12, 89 Atl. 439.

(b) H., contemplating a departure from home for the benefit of his health, made a deposit in a savings bank to the credit of himself and his mother, and the survivor of them, subject to the order of either. Afterwards he had the name of his mother erased and that of M. substituted, so that the account was made to stand in the books: "14,096,—H., M., and the survivor of them, subject to the order of either." About a month later, he drew out a portion of the deposit. He died within four months, and thereupon M. obtained the bank book from his trunk, where it had been constantly kept, and drew from the bank the entire balance, with the interest thereon. H. left no property other than this money, and by his will

made sundry pecuniary bequests. On a bill filed by his administrators against M. and her husband to recover back the money drawn from the bank by her, *held*, that the transaction did not constitute a gift *inter vivos* or *causa mortis*.—*Taylor v. Henry*, 48 Md. 550, 30 Am. Rep. 486. [*Cited and annotated* in 51 L. R. A. (N. S.) 1209, on creation of trust in personalty by parol; in 31 L. R. A. 454, on joint bank accounts; in 12 L. R. A. (N. S.) 355, on deposit in joint names as gift to codepositor; in 12 L. R. A. (N. S.) 549, on sufficiency of declaration to establish voluntary trust where settlor retains title.]

### § 67. Gifts of donor's promissory note or check.

#### *Annotation.*

Gift of checks.—18 L. R. A. 855, note.

### §§ 68-78. (See Analysis.)

### § 79. Evidence.

#### *Cross-Reference.*

Testimony as to transactions with persons since deceased, see "Witnesses," §§ 149, 173, 175.

### § 80.—Presumptions and burden of proof.

### § 81.—Admissibility.

#### *Cross-References.*

Admissions by donors as evidence to impeach gift, see "Evidence," § 233.

Declarations, see "Evidence," §§ 269, 273, 278.

(a) In an action to establish an alleged gift of a savings bank deposit by plaintiff's deceased aunt, whom plaintiff had attended in her last illness, evidence as to whether plaintiff had filed a claim in the Orphans' Court for services *held* irrelevant.—*Frentz v. Schwarze*, 122 Md. 12, 89 Atl. 439.

### § 82.—Weight and sufficiency.

#### *Cross-Reference.*

Admissions and declarations in general, see "Evidence," § 265, 313.

(a) On an issue as to a gift *causa mortis* of a savings bank account, a witness testified that shortly before the commencement of unconsciousness, which lasted till the donor's death, the donor told the donee that she could have the deposit, and where the pass book was. The donee testified that she took the keys and got the book after the donor's death, and a moment later testified that she took the keys before the death. A witness

testified that, two days after the funeral of donor, donee brought him the donor's papers, and denied that she had the pass book, and on the following day brought the book, and said she had no interest in the deposit. *Held*, that the evidence was insufficient to show a valid gift.—*Whalen v. Milholland*, 89 Md. 199, 43 Atl. 45, 44 L. R. A. 208. [*Cited and annotated* in 52 L. R. A. 849, on partnership books of account as evidence; in 12 L. R. A. (N. S.) 355, on deposit in joint names as gift to codepositor.]

(b) Where the widow of the deceased claimed certain bonds as donations *mortis causa*, and the only evidence to sustain the claim was a conversation of the deceased with the witness, while in his last sickness, and two days before he died, in which he told the witness that he had given the bonds to his wife, that she had them, and no one could take them from her, but did not say when he had given them to her, or whether it was before or during that sickness, it was *held* that the evidence was not sufficient to establish a *donatio mortis causa*.—*Hebb v. Hebb*, 5 Gill 506.

### § 83. Questions for jury.

### § 84. Instructions.

(a) In an action to establish a gift of a savings bank deposit, instruction for plaintiff that, if there was a gift, it was not necessary that plaintiff reduce the money to possession during the donor's lifetime *held* not in conflict with an instruction for defendant making plaintiff's recovery depend upon a finding that the donor had no power to countermand the order for payment on the deposit.—*Frentz v. Schwarze*, 122 Md. 12, 89 Atl. 439.

### GLANDERS.\*

#### *Cross-Reference.*

Destruction of horses afflicted with glanders, see "Animals," § 32.

### GLASS.\*

#### *Cross-Reference.*

See "Customs Duties," § 25.

### GOATS.\*

#### *Cross-Reference.*

See "Animals."

### GOLD.\*

#### *Cross-References.*

See "Mines and Minerals."

Medium of payment, see "Payment," § 12.

\*Annotation: Words and Phrases, same title.

**GONDOLA CARS.***Cross-References.*

See "Railroads," § 229.

Liability of master for injury to servant from defects, see "Master and Servant," § 111.

**GOOD BEHAVIOR.\****Cross-References.*

Credit on term of imprisonment, see "Prisons," § 15.

Security for, see "Breach of the Peace," §§ 16-22; "Disorderly Conduct," § 16; "Vagrancy," § 6.

**GOOD CHARACTER.\****Cross-Reference.*

Eligibility for license to sell liquor, see "Intoxicating Liquors," § 58.

**GOOD CONSIDERATION.\****Cross-References.*

See "Contracts," § 77; "Deeds," § 17.

**GOOD FAITH.\****Cross-References.*

Affecting liability for publication of privileged communication, see "Libel and Slander," § 50.

Affecting liability of executor or administrator for expenses and losses, see "Executors and Administrators," §§ 108-118, 456, 457.

Affecting priority of assignment, see "Assignments," § 87.

Affecting rights of redemptioner from mortgage foreclosure, see "Mortgages," § 624.

Affecting validity of assignments for creditors, see "Assignments for Benefit of Creditors," §§ 140-162.

Affidavit of good faith for purposes of appeal, see "Appeal and Error," § 367.

Affidavit of good faith of person appealing in forma pauperis, see "Appeal and Error," § 389.

As affecting rights under altered instrument, see "Alteration of Instruments," §§ 17, 18.

Bad faith of broker, effect on right to commissions, see "Brokers," § 65.

Cancellation of instrument as against purchaser in good faith, see "Cancellation of Instruments," § 31.

Carrying weapons in apprehension of danger, see "Weapons," § 13.

Competency of evidence, see "Evidence," § 151.

Defense to action for penalty for extortion, see "Extortion," § 11.

Defense to action for penalty for violation of liquor law, see "Intoxicating Liquors," § 180.

Defense to action on attachment bond, see "Attachment," § 345.

Defense to proceedings for violation of injunction, see "Injunction," § 226.

Effect as to award of exemplary damages, see "Damages," § 91.

Evidence as to good faith of assignor, see "Assignments for Benefit of Creditors," § 161.

Evidence of good faith in conveyance by insolvent, see "Assignments for Benefit of Creditors," § 278.

Frivolous or collusive actions, see "Action," § 8.

In acquisition of domicile for purpose of obtaining divorce, see "Divorce," § 64.

In creating liens before assignment, see "Assignments for Benefit of Creditors," § 338.

In making or procuring arrest, see "False Imprisonment," §§ 4, 9-14.

In taking of property as defense to prosecution for larceny, see "Larceny," § 3.

In transfer, as affecting competency to testify as to transactions with persons since deceased, see "Witnesses," § 140.

Legality of object in making assignments, see "Assignments," § 65.

Liability of purchasers in good faith to make restitution on reversal of judgment, see "Appeal and Error," § 1208.

Mitigation of damages for false imprisonment, see "False Imprisonment," § 33.

Of adverse possession, see "Adverse Possession," §§ 12, 84, 85, 115.

Of application for continuance, see "Continuance," § 19.

Of assignee, see "Assignments," § 94.

Of assignee as affecting his liability for losses, see "Assignments for Benefit of Creditors," § 381.

Of assignee of mortgage, see "Mortgages," § 257.

Of claim affecting validity of agreement for compromise and settlement, see "Compromise and Settlement," § 6.

Of debtor in giving preference for amount exceeding debt, see "Assignments for Benefit of Creditors," § 135.

Of defendant pleading self-defense, see "Assault and Battery," § 13.

Of defendant in former prosecution, see "Malicious Prosecution," §§ 15-33.

Of mortgagee, see "Chattel Mortgages," § 139; "Mortgages," §§ 153-157.

Of parents in contracting marriage void in law affecting legitimacy of children, see "Bastards," § 1.

Of party asking appeal in forma pauperis, see "Criminal Law," § 1077.

Of party asking equitable relief, see "Equity," § 65; "Injunction," § 108; "Quieting Title," § 14; "Reformation of Instruments," § 24; "Specific Performance," §§ 87-101.

Of person injuring animals, see "Animals," § 42.

Of person making improvements on land, see "Ejectment," § 142; "Improvements," §§ 3, 4; "Trespass to Try Title," § 57.

Of persons occupying land adversely, see "Adverse Possession," § 13.

Of pledgee, see "Pledges," § 24.

\*Annotation: Words and Phrases, same title.

Of purchaser from debtor, see "Bankruptcy," §§ 173, 182, 203.  
 Of purchaser from devisees or legatees, see "Wills," § 845.  
 Of purchaser from grantee in fraudulent conveyance, see "Fraudulent Conveyances," § 198.  
 Of purchaser from heirs or distributees, see "Descent and Distribution," § 134.  
 Of purchaser from insolvent corporation, see "Corporations," § 543.  
 Of purchaser from transferees of bankrupt, see "Bankruptcy," § 186.  
 Of purchaser in fraudulent conveyance, see "Fraudulent Conveyances," §§ 72, 164-171, 186, 187.  
 Of purchaser of bill or note, see "Bills and Notes," §§ 327-384.  
 Of purchaser of bonds, see "Bonds," §§ 92-102.  
 Of purchaser of corporate stock, see "Corporations," §§ 108, 149.  
 Of purchaser of goods, see "Sales," §§ 234-245.  
 Of purchaser of homestead, see "Homestead," § 129.  
 Of purchaser of land, see "Vendor and Purchaser," §§ 220-245.  
 Of purchaser of mortgaged property, see "Chattel Mortgages," §§ 153, 154; "Mortgages," § 174; "Vendor and Purchaser," §§ 220-245.  
 Of purchaser of municipal bonds or other securities, see "Municipal Corporations," §§ 941-948.  
 Of purchaser of property sold on execution, see "Execution," §§ 271-274.  
 Of purchaser of property sold on foreclosure, see "Mortgages," § 536.  
 Of purchaser of rights in public lands, see "Public Lands," § 138.  
 Of purchaser of school district warrants or orders, see "Schools and School Districts," § 95.  
 Of purchaser of trust property, see "Trusts," § 357.  
 Of purchaser of warehouse receipts, see "Warehousemen," § 17.  
 Of representations as essential to ownership of mark or name, see "Trade-Marks and Trade-Names," § 22.  
 Of settlers on and claimants of public lands, see "Public Lands," §§ 131-134.  
 Of trustee in management of property, see "Trusts," § 179.

Presumption as to good faith in claiming amount within jurisdiction of court, see "Appeal and Error," § 47.  
 Presumptions as to good faith of adverse claimant, see "Adverse Possession," § 85.  
 Reformation of instrument as against purchaser in good faith, see "Reformation of Instruments," § 29.  
 Review dependent on whether questions are of law or of fact, see "Appeal and Error," § 842.  
 Sale of intoxicating liquors, see "Intoxicating Liquors," §§ 131, 159.

### GOODS.\*

#### Cross-References.

In general, see "Property."  
 Abandonment, see "Abandonment."  
 Accession, see "Accession."  
 Adverse possession, see "Adverse Possession," § 40.  
 Alien ownership, see "Aliens," § 14.  
 Carriage, see "Carriers," §§ 39-202; "Shipping," §§ 101-155.  
 Confusion, see "Confusion of Goods."  
 Finding, see "Finding Lost Goods."  
 Findings as to possession, see "Adverse Possession," § 117.  
 Forgery of orders for delivery of, see "Forgery," § 7.  
 Hiring, see "Bailment."  
 Mortgage, see "Chattel Mortgages."  
 Pledge, see "Pledges."  
 Receiving stolen, see "Receiving Stolen Goods."  
 Recovery of specific goods, see "Detinue"; "Replevin"; "Sales," §§ 399-403.  
 Sales, see "Sales."  
 Storage, see "Warehousemen."

### GOOD TIME.

#### Cross-Reference.

Allowance to convict for good behavior, see "Prisons," § 15.

### GOOD TITLE.\*

#### Cross-References.

Of vendor in general, see "Vendor and Purchaser," §§ 128-144.  
 To sustain specific performance, see "Specific Performance," § 95.

## GOOD WILL.\*

### Scope-Note.

[INCLUDES nature and incidents of rights of property in the custom or patronage of an established business or trade in general, and sales and other contracts relating thereto.

[EXCLUDES rights of partners in respect of the good will of the firm business (see "Partnership"); and contracts in restraint of trade (see "Contracts").

[For complete list of matters excluded, see cross-references, post.]

\*Annotation: Words and Phrases, same title.

*Analysis.*

- § 1. Nature of property.
- § 2. Elements and incidents.
- § 3. Ownership in general.
- § 4. Sale or other transfer.
- § 5. — Requisites and validity.
- § 6. — Rights and liabilities of parties.
- § 7. Actions.

*Cross-References.*

Acceptance in payment of stock subscription, see "Corporations," § 88.  
 Admissibility of evidence of value of good will in suit to avoid fraudulent transfer of property, see "Fraudulent Conveyances," § 291.  
 As property which may be reached by creditors' suit, see "Creditors' Suit," § 8.  
 Assignment of contract not to engage in business within a certain territory, see "Assignments," §§ 5, 19.  
 Conversion of, see "Trove and Conversion," § 3.  
 Liability to transfer tax, see "Taxation," § 866.

Of business fraudulently conveyed, see "Fraudulent Conveyances," § 310.  
 Of firm, see "Partnership," §§ 67, 229, 257, 310.  
 Parol evidence as to good will, see "Evidence," § 417.  
 Pleading damage to good will of business, see "Damages," § 146.  
 Power of city to tax, see "Municipal Corporations," § 966.  
 Property conveyed by assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 174.  
 Restraint of trade, see "Contracts," §§ 116-118, 245.  
 Taxation, see "Taxation," §§ 67, 397.

**§ 1. Nature of property.**

(a) The subscription list and good will of a newspaper left by will constitute no element of value apart from the plant itself, since such items are of inappreciable value and too uncertain and contingent a nature to be the subject of appraisal or estimation.—*Seabrook v. Grimes*, 107 Md. 410, 68 Atl. 883. [Cited and annotated in 16 L. R. A. (N. S.) 240, on devise or bequest as passing good will of business connected with property willed.]

(b) The subscription list and good will of a printing office are not assets under the statutes. Their value is too uncertain and contingent to be the subject of estimate.—*Seighman v. Marshall*, 17 Md. 550.

**§ 2. Elements and incidents.***Cross-Reference.*

See ante, § 1.

*Annotation.*

Name of business establishment as part of the good will of the business.—15 L. R. A. 462, note.

(a) "Good will" is "the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock,

funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position, or from celebrity or reputation for skill, or affluence or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices."—*Brown v. Benzing-er*, 118 Md. 29, 84 Atl. 79, Ann. Cas. 1914B, 582.

**§ 3. Ownership in general.****§ 4. Sale or other transfer.***Cross-References.*

Contracts in restraint of trade, see "Contracts," §§ 116-118.

Merger of contracts in restraint of competition on sale of good will, see "Contracts," § 245.

Mutuality of contract, see "Contracts," § 10.

**§ 5.— Requisites and validity.***Annotation.*

Does good will pass with transfer of business without specific mention.—5 L. R. A. (N. S.) 1077, note.



## § 6.—Rights and liabilities of parties.

### Cross-References.

As defense to action on note, see "Bills and Notes," § 452.

On sale of interest in partnership, see "Partnership," § 229.

### Annotation.

Sale of business and good will as a limitation upon vendor's right to engage in competing business.—19 L. R. A. (N. S.) 762, note.

(a) Where a contract is for the sale of, or for the right to use, a fictitious name or a trade-name or trade-mark, the right is assignable by the purchaser and follows the business; but, where the contract merely gives to one the right to use the name of another, such right is personal, and in the absence of an express stipulation cannot be transferred by the purchaser.—*Marcus v. McFarland*, 119 Md. 269, 86 Atl. 337.

(b) Where a surgeon chiroprapist sells his business, "including the good will," the restriction of competition by such chiroprapist extends only to the territory or locality over which the seller's practice extended.—*Brown v. Benzinger*, 118 Md. 29, 84 Atl. 79, Ann. Cas. 1914B, 582.

## § 7. Actions.

### Cross-References.

Allowance of nominal damages on failure to prove actual damages, see "Damages," § 12.

Excessive damages for breach of contract, see "Damages," § 140.

Liquidated damages or penalty for breach of contract not to engage in business sold, see "Damages," §§ 78, 79, 85.

Nominal damages, see "Damages," § 12.

Speculative damages, see "Damages," § 23.

(a) In an action on the note for the purchase money of a stock, good will, and fixtures of a business, formerly conducted by a third person from whom plaintiff had purchased it, which plaintiff sold to defendant, agreeing not to engage in, nor assist such third person to engage in, the same business in the neighborhood of the store sold, the defendant cannot recoup as damages the injury done to the good will sold him by the third person's engaging in the same business just opposite the store sold.—*Webb v. McCloskey*, 68 Md. 196, 11 Atl. 715.

(b) The remedy for the violation of a contract for the sale of the good will is at law.—*Zeigler v. Sentzner*, 8 G. & J. 150, 29 Am. Dec. 534.

## GOSPEL.\*

### Cross-Reference.

Requests to disseminate, see "Charities," §§ 13, 21, 22.

## GOVERNMENT.\*

### Cross-References.

Enforcement of debts to government against exempt property, see "Homestead," § 105.

Judicial notice of matters relating to government and its administration, see "Criminal Law," § 304; "Evidence," §§ 23-39.

Political bodies and divisions, see "Counties"; "District of Columbia"; "Municipal Corporations"; "States"; "Territories"; "Towns"; "United States."

Drainage districts, see "Drains," §§ 12-20. Irrigation districts, see "Waters and Water Courses," §§ 223-231.

Levee districts, see "Levees," §§ 4-11.

Water districts, see "Waters and Water Courses," § 183½.

Systems and sources of law, see "Common Law"; "Constitutional Law"; "International Law"; "Parliamentary Law"; "Statutes"; "Treaties."

Legislative and executive powers and functions, see "Bounties"; "Census"; "Customs Duties"; "Drains"; "Eminent Domain"; "Highways"; "Inspection"; "Internal Revenue"; "Levees"; "Pen-sions"; "Post Office"; "Private Roads"; "Schools and School Districts"; "Taxation"; "Weights and Measures."

Judicial powers and functions, and courts and their officers, see "Amicus Curiae"; "Clerks of Courts"; "Contempt"; "Court Commissioners"; "Courts"; "Judges"; "Justices of the Peace"; "Removal of Causes"; "Reports"; "United States Commissioners."

Civil service officers and institutions, see "Ambassadors and Consuls"; "Asylums"; "Attorney General"; "Coroners"; "District and Prosecuting Attorneys"; "Elections"; "Hospitals"; "Newspapers"; "Notaries"; "Officers"; "Prisons"; "Reformatories"; "Registers of Deeds"; "Sheriffs and Constables"; "United States Marshals."

Military and naval service, see "Army and Navy"; "Militia"; "War."

Priority of claims of government in distribution of estate of bankrupt, see "Bankruptcy," § 349.

## GOVERNMENT OWNERSHIP.

### Cross-References.

Of public utilities, see "Bridges," §§ 6-12, 26; "Drains," §§ 7-11; "Electricity," § 1½; "Gas," § 3; sewers, see "Municipal Corporations," § 708; wharves, see "Municipal Corporations," § 719; "Street Railroads," § 13; public water supply,

\*Annotation: Words and Phrases, same title.

see "Waters and Water Courses," § 183.  
 Power of municipality to transfer option to purchase public utility, see "Municipal Corporations," § 225.  
 Public dispensaries, see "Intoxicating Liquors," §§ 127-129.  
 Transfer or lease of public utility owned by city, see "Municipal Corporations," § 225.

### GOVERNOR.\*

#### Cross-References.

See "States," § 41; "Territories," § 22.  
 Appointment of officers in general, see "Officers," §§ 6, 58.  
 Approval or veto of amendments to Constitution, see "Constitutional Law," § 7.  
 Approval or veto of bills, see "Statutes," §§ 25-35.  
 Delegation of legislative powers to executive, see "Constitutional Law," § 62.  
 Encroachment by executive on judiciary, see "Constitutional Law," §§ 78-80.  
 Encroachment by executive on Legislature, see "Constitutional Law," § 77.  
 Encroachment by Legislature on executive powers, see "Constitutional Law," § 58.  
 Extradition of fugitives from justice, see "Extradition," §§ 21-42.  
 Jurisdiction of appellate courts to answer questions submitted by Governor, see "Courts," § 208.  
 Nature and scope of powers under Constitution in general, see "Constitutional Law," § 76.  
 Pardoning power, see "Pardons."  
 Powers of Legislature at extra session in general as affected by proclamation calling it together, see "Statutes," § 5.  
 Removal and suspension of officers in general, see "Officers," §§ 7, 71.  
 Sufficiency of proclamation calling extra session of Legislature to authorize proposal of amendments to Constitution, see "Constitutional Law," § 7.

### GRABIRON.\*

#### Cross-Reference.

Liability of master for injury to servant from absence of or defect in, see "Master and Servant," §§ 106, 111, 124, 125, 128, 210, 217, 221, 235, 240, 247.

### GRACE, DAYS OF.\*

#### Cross-References.

See "Bills and Notes," § 130.  
 Allowance of days of grace for filing record on appeal, see "Appeal and Error," § 624.  
 Erasure of words "and grace" from note, see "Alteration of Instruments," § 6.  
 Last day of grace falling on Sunday, see "Time," § 10.  
 Premature action on note on last day of grace, see "Action," § 62.

### GRADE.\*

#### Cross-References.

Establishment and change of grade of highways and streets, see "Highways," §§ 71, 72, 115; "Municipal Corporations," §§ 269, 385.

### GRADE CROSSINGS.\*

#### Cross-Reference.

See "Railroads," § 99.

### GRADED SCHOOLS.

#### Cross-Reference.

See "Schools and School Districts," § 163.

### GRADING CONTRACTS.

#### Cross-Reference.

See "Contracts," § 198.

### GRADUATION.

#### Cross-Reference.

Of students, see "Colleges and Universities," § 9.

### GRAFT.\*

#### Cross-Reference.

Rights of mortgagee on acquisition of outstanding title by mortgagor, see "Mortgages," § 144.

### GRAIN.\*

#### Cross-References.

In general, see "Crops."  
 Damages for injuries to growing crops, see "Damages."  
 Inspection, see "Inspection."  
 Negligent burning in general, see "Negligence," § 21.  
 Negligent burning by railroad trains, see "Railroads," §§ 453-488.  
 Speculations, see "Gaming," §§ 10-15, 31-38, 69.  
 Storage, see "Warehousemen."  
 Willful and malicious burning, see "Fires."

### GRAMMAR.\*

#### Cross-References.

Mistakes in grammar in contract, see "Contracts," § 157.  
 Mistakes in grammar in indictment or information, see "Indictment and Information," § 79.  
 Mistakes in grammar in pleading, see "Pleading," § 30.  
 Mistakes in grammar in statute, see "Statutes," § 200.  
 Mistakes in grammar in will, see "Wills," § 464.

### GRANDCHILDREN.\*

#### Cross-References.

Designation in will, see "Wills," § 497.  
 Liability of grandparents for support of indigent grandchildren, see "Paupers," § 37.  
 Rights of inheritance, see "Descent and Distribution," § 28.

### GRAND INQUEST.\*

#### Cross-Reference.

See "Grand Jury."

\*Annotation: Words and Phrases, same title.

## GRAND JURY.\*

*Scope-Note.*

[INCLUDES bodies of persons sworn to inquire into and make presentment of public offenses; nature and constitution of such juries; qualifications, selection, summoning, and compensation of grand jurors; challenges and objections; organization, powers and duties, and general conduct of business of grand juries; secrecy as to their proceedings; liabilities of grand jurors for misconduct, etc.; and liabilities of others for interference with grand juries.

[EXCLUDES matters relating to juries in general (see "*Jury*"); and necessity, finding, filing, and requisites of indictments and presentments (see "*Indictment and Information*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and functions in general.
- § 2. Constitutional and statutory provisions.
- § 2½. Constitution in general.
- § 3. Number of jurors.
- § 4. Apportionment of jurors.
- § 5. Qualifications of jurors.
- § 6. Exemptions from service.
- § 7. Authority to select and summon jurors.
- § 8. Selection of jurors.
- § 9. Summoning jurors in general.
- § 10. Special venire or special grand jury.
- § 11. Excusing and discharging jurors.
- § 12. Summoning talesmen.
- § 13. Attendance of jurors.
- § 14. Compensation of jurors.
- § 15. Competency of jurors.
- § 16. Quashing venire.
- § 17. Challenge to panel.
- § 18. Challenge to polls.
- § 19. Waiver of objections to jurors.
- § 20. Impaneling and organization in general.
- § 21. Appointment of foreman.
- § 22. Oath.
- § 23. Charge.
- § 24. Powers and duties.
- § 25. — In general.
- § 26. — Offenses and accusations.
- § 27. — Public officers and institutions.
- § 28. Term of service and sessions.
- § 29. — In general.
- § 30. — Term of court.
- § 31. — Adjournments.
- § 32. Attendance of officer.

---

\*Annotation: Words and Phrases, same title.

- § 33. Conduct of proceedings in general.
- § 34. Participation of prosecuting attorney.
- § 35. Presence of accused or his counsel.
- § 36. Attendance and examination of witnesses.
- § 37. Examination of accused.
- § 38. Presence and use of stenographers.
- § 39. Effect of presence or participation of unauthorized persons.
- § 40. Minutes or record of proceedings.
- § 41. Secrecy as to proceedings.
- § 42. Presentments or reports to court in general.
- § 43. Liabilities of jurors.
- § 44. Liabilities for interference with grand jury.

### *Cross-References.*

See "Indictment and Information."

Allegations in indictment or information as to matters not known to grand jury, see "Indictment and Information," § 69.

Apprehension of danger as justification for carrying weapons into grand jury room, see "Weapons," § 13.

Competency in criminal prosecution of evidence not presented to grand jury, see "Criminal Law," § 389.

Competency of jurors as witnesses as to proceedings before them, see "Witnesses," § 72.

Concurrence in proceedings for incorporation of boroughs, see "Municipal Corporations," § 12.

Confessions before, see "Criminal Law," § 521.

Declarations by accused before grand jury, see "Criminal Law," § 406.

Defects in summoning or impaneling as ground for arrest of judgment, see "Criminal Law," § 970.

Defects in summoning or impaneling as ground for motion to quash indictment, see "Indictment and Information," § 137.

Demurrer to indictment for errors or irregularities, see "Indictment and Information," § 147.

Description of grand jury, in caption of indictment, see "Indictment and Information," § 25.

Discrimination as to service on juries by reason of race, color or condition, see "Civil Rights," § 10; "Constitutional Law," § 221.

Ex post facto law reducing number of grand jurors, see "Constitutional Law," § 199.

Failure to indict as ground for discharge of accused, see "Criminal Law," § 576.

Failure to indict as termination of prosecution, see "Malicious Prosecution," § 35.

False testimony in proceedings before grand jury as perjury, see "Perjury," §§ 6, 9.

Fees of officers for summoning grand jurors, see "Sheriffs and Constables," § 53.

Fees of witnesses before grand jury, see "Witnesses," §§ 27, 31.

Finding as evidence on question of existence of probable cause for prosecution, see "Malicious Prosecution," § 24.

Finding of indictment or presentment, see "Indictment and Information," § 10.

Grand juror serving as petit juror, ground for new trial, see "Criminal Law," § 923.

Harmless error in organization and proceedings of, see "Criminal Law," § 1166.

Immunity from prosecution for testifying before grand jury, see "Criminal Law," § 42.

Impeachment of witness by former testimony given before grand jury, see "Witnesses," §§ 379, 393.

Indians as grand jurors, see "Indians," § 30.

Inducements by members of grand jury to accused as affecting voluntary character of confessions, see "Criminal Law," § 520.

Irregularities reviewable on habeas corpus, see "Habeas Corpus," § 96.

Knowledge of falsity of testimony in proceedings before grand jury as affecting liability for perjury, see "Perjury," § 12.

Liability of county for expenses of or connected with proceedings of grand jury, see "Counties," § 139.

Malicious prosecution of complaint before grand jury, see "Malicious Prosecution," § 7.

Materiality of testimony in proceedings before grand jury as affecting liability for perjury, see "Perjury," § 11.

Mode of making objection to indictment for disqualification of jurors, see "Indictment and Information," § 133.

Mode of objecting to indictment for irregularities in drawing, summoning, or impaneling, see "Indictment and Information," § 133.

Objections to organization for purpose of review, see "Criminal Law," § 1031.

Organization by de facto judge, see "Judges," § 6.

Pleas in abatement for defects and irregularities, see "Criminal Law," §§ 278-285.

Practice in federal courts, see "Courts," § 352.

Presumptions on appeal as to organization and proceedings of, see "Criminal Law," § 1144.

Prior service as grand jurors affecting competency of petit jurors, see "Jury," § 95.

Privilege of accused on examination before grand jury, see "Witnesses," § 300.

Quashing indictment for defects in composition of constitution of jury, see "Indictment and Information," § 137.

Recommendation of adoption of highway laws, see "Highways," § 19.

Removal of case to grand jury on summary trial of one accused of crime, see "Criminal Law," § 253.

Resubmission on invalidity of indictment, see "Indictment and Information," § 15.

Return of indictment on holiday, see "Holidays," § 5.

Scope and contents of record on appeal, see "Criminal Law," § 1088.

Scope and extent of review of questions re-

lating to selection of, in general, see "Criminal Law," § 1134.

Signatures to indictments, see "Indictment and Information," § 33.

Slandorous imputations concerning grand juror, see "Libel and Slander," § 10.

Submission of tax levy to grand jury, see "Taxation," § 301.

Summoning grand jury in United States Circuit Court where district is divided, see "Courts," § 410.

Time for pleas in abatement, see "Criminal Law," § 279.

Violation of federal statute in selecting grand jury as presenting question within jurisdiction of United States Supreme Court, see "Courts," § 387.

## § 1. Nature and functions in general.

## § 2. Constitutional and statutory provisions.

### Cross-Reference.

See post, §§ 3, 5, 8.

## § 2½. Constitution in general.

### Cross-References.

Irregularities in organization as ground for arrest of judgment, see "Criminal Law," § 970.

Necessity of plea raising objection to exclusion of negroes, see "Criminal Law," § 261.

Plea in abatement for discrimination, see "Criminal Law," § 280.

### Annotation.

Organization of grand jury.—27 L. R. A. 776, note.

## § 3. Number of jurors.

### Cross-References.

Insufficient number as ground for arrest of judgment, see "Criminal Law," § 970.

Plea in abatement for insufficient number, see "Criminal Law," § 230.

### Annotation.

Number necessary to form grand jury.—27 L. R. A. 783, 846, notes.

(a) Where 23 qualified jurors are impaneled and sworn at the organization of the grand jury, the subsequent excusing of one of them does not invalidate such jury.—*State v. McNay*, 100 Md. 622, 60 Atl. 273. [Cited and annotated in 23 L. R. A. (N. S.) 1116, on power of legislature to impose upon judges duty to assist in drawing jurors.]

(b) The provision of act 1904, c. 560, § 177a, p. 954, applicable to Prince George's county, fixing 23 as the requisite number to constitute a grand jury, is mandatory.—*State v. McNay*, 100 Md. 622, 60 Atl. 273. [Cited and annotated, see supra.]

(c) The local law of Prince George's county (§ 179), declaring that the 23 names first occurring in the order in which they are drawn shall constitute the grand jury, is mandatory, and hence an indictment found by the jury of less than 23 is invalid.—*State v. Vincent*, 91 Md. 718, 47 Atl. 1036, 52 L. R. A. 83.

## § 4. Apportionment of jurors.

## § 5. Qualifications of jurors.

### Cross-References.

Indians, see "Indians," § 30.

Objections for purpose of review, see "Criminal Law," § 1031.

Plea in abatement for incompetency or disqualification, see "Criminal Law," §§ 278-280.

Setting forth in caption of indictment, see "Indictment and Information," § 25.

### Annotation.

Qualifications of grand jurors.—28 L. R. A. 195, note.

(a) Code 1904, art. 51, § 5, provides that "no person shall be selected to serve as a juror in any court where he hath any matter of fact depending for trial" at the time, and no such person "shall be admitted as a qualified juror between party and party during the sitting of the court in which such matter of fact shall be or expected to be tried, and such disqualification" is a "good cause for challenge of any juror, but no verdict of a jury shall therefor be set aside or judgment thereon stayed, arrested or reversed." This section is a codification of act of 1715, c. 37, § 9, which disqualifies such a person to serve as a "petit juror" and act of 1778, c. 21, §§ 2, 3, which provide that no verdict or judgment shall be stayed, arrested, or reversed because "any juror who tried the cause had

a matter of fact depending for trial as aforesaid." *Held*, that the provisions of § 5 refer to petit jurors, and not to grand jurors.—*Pontier v. State*, 107 Md. 384, 68 Atl. 1059. (See Code 1911, art. 51, § 5.) [Cited and annotated in 26 L. R. A. (N. S.) 464, on admissibility of civil judgment in criminal prosecution.]

(b) Under Const., Decl. of Rights, art. 36, providing that no one otherwise competent shall be deemed incompetent as a juror on account of his religious belief, providing he believes in the existence of God, etc., a plea in abatement to an indictment, alleging that one of the members of the grand jury returning the same was an atheist and infidel who did not believe in the existence of God "nor in the truths of the Holy Scriptures," presented a false issue by averring that the juror did not believe in the truths of the Holy Scriptures, which was not an essential qualification, and was therefore unsustainable.—*State v. Mercer*, 101 Md. 535, 61 Atl. 220. [Cited and annotated in 32 L. R. A. (N. S.) 146, on sufficiency of averment in indictment or information for perjury as to jurisdiction or authority to administer oath.]

(c) The provision of act 1904, p. 954, c. 560, § 1, applicable to Prince George's county (Local Code, art. 17, § 177a), requiring jurors in that county to be able to read and write the English language, is not mandatory, so that the inability of one member of the grand jury to read and write does not invalidate an indictment returned by such jury.—*State v. McNay*, 100 Md. 622, 60 Atl. 273. [Cited and annotated, see *supra*, § 3.]

## § 6. Exemptions from service.

*Annotation.*

Exemption of grand jurors.—28 L. R. A. 199, note.

## § 7. Authority to select and summon jurors.

## § 8. Selection of jurors.

*Cross-References.*

Discrimination in selection ground for arrest of judgment, see "Criminal Law," § 970.

Hearing on motion to quash indictment for discrimination, see "Indictment and Information," § 140.

Judicial notice as to drawing of grand jurors, see "Criminal Law," § 304.

Pleas in abatement for defects and irregularities, see "Criminal Law," §§ 278, 280.

Violation of federal statute in selecting grand jury as presenting question within appellate jurisdiction of United States Supreme Court, see "Courts," § 387.

(a) Code 1888, art. 51, § 7, relative to juries, provides that the circuit judges, in the presence of the bar, shall impartially select from the tax lists, and from the poll books, a panel of 150 persons, and of the names of such persons when so selected a list shall be made, etc. *Held*, that an indictment was not invalidated because the panel, otherwise regular, was composed of persons on a list which the judge had privately made up from a list sent to him by the clerk, which latter list contained the names of 102 persons who were not drawn from the panel selected by the deceased circuit judge, who presided at the former term, and 48 names selected by the former judge to supply the places of those who had been drawn; the names on the list sent by the clerk having been compared with the tax lists, but not with the poll books.—*State v. Keating*, 85 Md. 188, 36 Atl. 840. (See Code 1911, art. 51, § 7.)

(b) Though Code 1888, art. 51, § 8, relating to juries, provides that the clerk who was present at the writing and folding of the ballots shall not be designated to draw the 48 names from the box, the fact that a deputy clerk who wrote the ballots drew the names from the box was an irregularity not sufficient to invalidate the indictment, where his action was not prejudicial to defendant.—*State v. Keating*, 85 Md. 188, 36 Atl. 840. (See Code 1911, art. 51, § 8.)

(c) Within Code 1888, art. 51, § 6, providing for the drawing of the grand jury from a tax list required to be filed not less than 20 days before the regular term after the last general election, the "nonjury term," which, it is provided, shall be held in December, is a regular term, and an election for president and vice-president of the United States, and representatives to Congress, is a regular election.—*Downs v. State*, 78 Md. 128, 26 Atl. 1005. (See Code 1911, art. 51, § 6.) [Cited and annotated in 27 L. R. A. 782, on organization of grand jury.]

(d) The provision of Code 1888, art. 51, § 6, that the names to be used in the selection of grand juries shall be taken from the poll books, is sufficiently complied with by a selection from the registries of voters, which show the qualified voters while the poll books not only show this, but also indicates who have voted.—*Downs v. State*, 78 Md. 128, 26 Atl. 1005. (See Code 1911, art. 51, § 6.) [Cited and annotated, see supra.]

(e) A grand jury drawn from a list of 200 names prepared by the judge previous to the time appointed for the purpose, without reference to the tax list and poll books, and including the names of some persons suggested to the judge by others, is not a legal body, since Code 1888, art. 51, § 7, requires the judge to select the 200 names at the appointed time from the names appearing in the tax list and poll books, and since, under § 11, persons whose names have been suggested to the judge as jurors are disqualified to act in that capacity.—*Avirett v. State*, 76 Md. 510, 25 Atl. 676, 987. (See Code 1911, art. 51, §§ 7, 11.) [Cited and annotated in 28 L. R. A. 198, on qualification of grand jurors.]

(f) Code 1860, Pub. Loc. Laws, applicable to Baltimore city, art. 4, §§ 601-618, provides that the four judges, or any two of them forming a quorum, "shall meet" in the city of Baltimore, and there "select" the "names" of a certain number of persons to serve as grand and petit jurors in such city, where the deputy clerk made such selection from the list of names, which selection was approved and adopted by the judges separately, and without consultation with each other, and there was no "meeting" for consultation before, or approval after, the selection was made. *Held*, that such a selection was not a substantial compliance with the law, and that an indictment found by a grand jury so selected was not good.—*Clare v. State*, 30 Md. 164. (See Balto. City Rev. Charter, §§ 602-622.) [Cited and annotated in 27 L. R. A. 784, on organization of grand jury.]

#### § 9. Summoning jurors in general.

##### Cross-References.

Irregularity as affecting validity of indictment, see "Indictment and Information," § 10.

Matters to be shown by record on appeal, see "Criminal Law," § 1086.

Pleas in abatement for defects, see "Criminal Law," § 280.

Power of district courts of Oklahoma as to summoning grand jurors, see "Courts," § 436.

Sufficiency of showing in indictment, see "Indictment and Information," § 17.

Summoning grand jury in United States Circuit Court where district is divided, see "Courts," § 410.

#### § 10. Special venire or special grand jury.

#### § 11. Excusing and discharging jurors.

(a) Act 1890, c. 62, provides that "if, for any reason, any person drawn as a grand juror shall fail to attend, be disqualified, or excused for cause, the court in its discretion, may fill such vacancy." Code 1888, art. 51, § 8, provides that if any persons whose names are drawn as jurors and embraced in the venire facias shall be dead, sick, or otherwise unable to attend, or cannot be found, the sheriff shall make return of such fact, as the case may be. *Held*, that the court had power to excuse persons drawn on a grand jury, and to fill their places, without the sheriff's return that they were "dead, sick, or otherwise unable to attend."—*Mills v. State*, 76 Md. 274, 25 Atl. 229. (See Code 1911, art. 51, §§ 8, 10.)

§§ 12-14. (See Analysis.)

#### § 15. Competency of jurors.

##### Cross-References.

Disqualification as ground for arrest of judgment, see "Criminal Law," § 970.

Practice in federal courts, see "Courts," § 352.

Review of findings of lower court as to, see "Criminal Law," § 1158.

#### § 16. Quashing venire.

##### Cross-Reference.

See post, § 17.

#### § 17. Challenge to panel.

##### Cross-Reference.

Want of opportunity to challenge as ground for arrest of judgment, see "Criminal Law," § 970.

(a) Names from which 48 are to be drawn for grand and petit juries are required by act 1870, c. 220, to be placed in different compartments, according to residence, from each of which a certain number are drawn. One person whose name was thus drawn did not reside in the district which the compartment represented, but he was not among the

grand jurors. *Held*, on plea in abatement, that this irregularity did not vitiate an indictment found by the grand jury.—*State v. Glasgow*, 59 Md. 209. (See Code, art. 51, § 8.) [Cited and annotated in 28 L. R. A. 199, on qualification of grand jury.]

### § 18. Challenge to polls.

### § 19. Waiver of objections to jurors.

#### Cross-Reference.

Pleas in abatement, see "Criminal Law," § 278.

(a) An objection to an indictment on the ground that the grand jury finding it was not composed of the requisite number of jurymen is waived by pleading to the merits.—*State v. Vincent*, 91 Md. 718, 47 Atl. 1036, 52 L. R. A. 83.

(b) Since the accused, in practice, often has no knowledge of the impaneling of the grand jury until after the indictment is found, nor any opportunity of interposing a challenge to the array, he is not confined to the latter remedy, but may object to the mode of impaneling a grand jury, whether to the qualification of individual jurors or to the composition of the whole body, by plea in abatement to an indictment found by them, if filed before a plea to the merits.—*Clare v. State*, 30 Md. 163. [Cited and annotated in 27 L. R. A. 784, on organization of grand jury.]

### § 20. Impaneling and organization in general.

#### Cross-References.

Defects ground for arrest of judgment, see "Criminal Law," § 970.

Objections for purpose of review, see "Criminal Law," § 1031.

Pleas in abatement for irregularities, see "Criminal Law," §§ 278, 280; "Prohibition," § 6.

#### Annotation.

Organization of grand jury.—27 L. R. A. 776, note.

### § 21. Appointment of foreman.

#### Cross-Reference.

Signature to indictment, see "Indictment and Information," § 33.

### § 22. Oath.

#### Cross-References.

Continuance of case without indicting as cause for discharge of accused for delay, see "Criminal Law," § 576.

Lack of, ground for arrest of judgment, see "Criminal Law," § 970.

Setting forth in caption of indictment, see "Indictment and Information," § 25.

#### Annotation.

Oath of grand juror.—27 L. R. A. 788, note.

### § 23. Charge.

### §§ 24-27. Powers and duties.

(a) Grand juries have jurisdiction on their own motion to originate charges against offenders, though no preliminary proceedings have been had before a magistrate, and though neither the court nor the state's attorney have given the matter in charge to them.—*Blaney v. State*, 74 Md. 153, 21 Atl. 547.

### §§ 28-31. Term of service and sessions.

#### Annotation.

Time and term of grand jury.—27 L. R. A. 785, note.

### § 32. Attendance of officer.

#### Cross-Reference.

Compensation for attendance, see "Sheriffs and Constables," § 55.

### § 33. Conduct of proceedings in general.

#### Cross-Reference.

Pleas in abatement for irregularities, see "Criminal Law," § 280.

#### Annotation.

Absence of foreman or jurymen from grand jury room.—44 L. R. A. (N. S.) 1142, note.

Competency of evidence before grand jury.—28 L. R. A. 318, note.

(a) Under Code 1904, art. 33, § 76, providing for the destruction of ballots at the end of six months, unless the keepers are previously notified to produce them to be used as evidence in some contested election or other judicial investigation, the grand jury investigating violations of the Primary Election Law has a right to have the ballot boxes and ballots before them.—*Cochran v. State*, 119 Md. 539, 87 Atl. 400; *Smith v. Same*, Id. (See Code 1911, art. 33, § 78.) [Cited and annotated in 51 L. R. A. (N. S.) 387, on effect of excessive sentence.]

### § 34. Participation of prosecuting attorney.

### § 35. Presence of accused or his counsel.

#### Cross-Reference.

Pleas in abatement for defects and irregularities, see "Criminal Law," § 280.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.



### § 36. Attendance and examination of witnesses.

#### *Cross-References.*

Compelling testimony as to incriminative matter as defense to perjury, see "Perjury," § 15.

Fees of witnesses, see "Witnesses," §§ 27, 31.

Incompetent testimony before as ground for arrest of judgment, see "Criminal Law," § 968.

Necessity of re-examination on resubmission to grand jury, see "Indictment and Information," § 15.

Presumptions in habeas corpus proceedings, see "Habeas Corpus," § 85.

Privileged communication, see "Witnesses," §§ 184-223.

### § 37. Examination of accused.

#### *Cross-References.*

Error in as ground for arrest of judgment, see "Criminal Law," § 968.

Privilege of accused, see "Witnesses," § 300.

### § 38. Presence and use of stenographers.

### § 39. Effect of presence or participation of unauthorized persons.

#### *Cross-Reference.*

Plea in abatement, see "Criminal Law," § 280.

(a) An election judge is not prejudiced by the presence of the custodians of the boxes in the grand jury room while the ballots are being examined; it appearing that the grand jury did not deliberate upon any matter in their presence.—*Cochran v. State*, 119 Md. 539, 87 Atl. 400; *Smith v. Same*, Id. [Cited and annotated, see *supra*, § 33.]

### § 40. Minutes or record of proceedings.

#### *Cross-References.*

Best and secondary evidence, see "Criminal Law," § 400.

Conclusiveness as to names of witnesses to be indorsed on indictment, see "Criminal Law," § 628.

Grounds for setting aside presentment, see "Indictment and Information," § 10.

Inspection by accused before pleading, see "Criminal Law," § 268.

Inspection by accused before trial, see "Criminal Law," § 627½.

Return of evidence with indictment, see "Indictment and Information," § 12.

### § 41. Secrecy as to proceedings.

#### *Cross-References.*

Competency of jurors as witnesses as to proceedings before them, see "Witnesses," § 72.

Instructions as to weight of evidence in prosecution for disclosing secrets, see "Criminal Law," §§ 763, 764.

Requests for instructions in prosecution for disclosing secrets, see "Criminal Law," § 825.

(a) In a criminal prosecution, evidence by members of the grand jury tending to show that an indictment was not concurred in by a majority of that body is inadmissible.—*Hooker v. State*, 98 Md. 145, 56 Aty. 390.

(b) That counsel cannot state what a grand jury will testify to in regard to testimony before the grand jury does not render his testimony inadmissible.—*Kirk v. Garrett*, 84 Md. 383, 35 Atl. 1089.

### § 42. Presentments or reports to court in general.

#### *Cross-References.*

During trial, see "Criminal Law," § 655.

Judicial notice of report of grand jury, see "Criminal Law," § 304.

### § 43. Liabilities of jurors.

#### *Cross-Reference.*

Malicious prosecution, see "Malicious Prosecution," § 42.

### § 44. Liabilities for interference with grand jury.

#### *Annotation.*

Improper influence or interference with grand jury.—28 L. R. A. 367, note.

## GRAND LARCENY.\*

#### *Cross-Reference.*

See "Larceny," § 23.

## GRAND LIST.\*

#### *Cross-Reference.*

Assessment roll, see "Taxation," §§ 408-446.

## GRANDPARENTS.

#### *Cross-Reference.*

Rights of inheritance, see "Descent and Distribution," § 36.

## GRAND STAND.

#### *Cross-Reference.*

Liability for injury to person in grand stand, see "Theaters and Shows," § 6.

## GRANGES.

#### *Cross-Reference.*

See "Associations," §§ 5, 8.

\*Annotation: Words and Phrases, same title.

**GRANTS.\****Cross-References.*

- See "Dedication"; "Deeds."
- Alteration, see "Alteration of Instruments."
- As evidence in general, see "Evidence," §§ 335, 353.
- As evidence in boundary proceedings, see "Boundaries," § 36.
- As evidence in ejectment, see "Ejectment," §§ 90, 95.
- As evidence in trespass to try title, see "Trespass to Try Title," §§ 40, 41.
- Best and secondary evidence, see "Evidence," §§ 158, 165, 174, 183.
- Champertous grants, see "Champerty and Maintenance," § 7.
- Constitutional grant of powers in general, see "Constitutional Law," § 26.
- Construction of legislative grants, see "Statutes," § 238.
- Effect on boundaries of priority of grants, see "Boundaries," § 24.
- Extent of franchise, see "Franchises," § 3.
- Impairment by statute, see "Constitutional Law," §§ 120-144, 147.
- In aid of railroads, see "Railroads," § 34.
- License distinguished from grant, see "Licenses," § 44.
- Of authority to riparian owners to construct wharves, see "Navigable Waters," § 43.
- Of easements, see "Easements," §§ 12, 13.
- Of franchise in general, see "Franchises," §§ 2, 4.
- Of franchises by municipal corporations in general, see "Municipal Corporations," §§ 71, 285, 309, 680-690, 722.
- Of franchises by special or local law, see "Statutes," § 79.
- Of franchises or privileges for particular purposes, see "Banks and Banking," § 6; "Bridges," § 15; "Canals," § 9; "Carriers," §§ 7, 8; "Charities," § 40; "Colleges and Universities," § 5; "Corporations," §§ 7-24; "Electricity," §§ 4, 5; "Ferries," §§ 11, 15; "Gas," §§ 6, 7; "Insurance," §§ 36, 57; "Mines and Minerals," § 105; "Railroads," § 18; "Street Railroads," § 17; "Telegraphs and Telephones," § 7; "Turnpikes and Toll Roads," § 9; "Waters and Water Courses," §§ 188, 189.
- Of incorporation, see "Corporations," § 21.
- Of land under navigable waters, see "Navigable Waters," § 37.
- Of mineral lands, see "Mines and Minerals," §§ 1-46.
- Of minerals and mining rights, see "Mines and Minerals," §§ 53-55.
- Of monopolies, see "Monopolies," §§ 1-7.
- Of powers, see "Powers," § 9.
- Of public lands, see "Public Lands."
- Of riparian lands or rights, see "Navigable Waters," §§ 44, 46.
- Of rights to use public buildings, parks or other public property, see "Municipal Corporations," § 722.
- Of rights to use streets for purposes other than highway, see "Municipal Corporations," §§ 680-690.

- Of right of way and other interests in land to railroad company, see "Railroads," §§ 61-82.
- Of special charters to corporations, see "Corporations," § 8.
- Parol or extrinsic evidence to contradict or vary, see "Evidence," § 390.
- To Indian nations or tribes, see "Indians," § 12.

**GRASS.\****Cross-References.*

- See "Crops."
- Damages for injuries to grass in general, see "Damages," § 112.
- Haystacks as included in term "grass," see "Arson," § 12.
- Negligent burning in general, see "Negligence," § 21.
- Negligent burning by fires set by railroad trains, see "Railroads," §§ 453-488.
- Noxious weeds, see "Agriculture," § 8.
- Willful or malicious burning, see "Fires."

**GRASS BLADE.***Cross-Reference.*

- Indictment charging assault with grass blade, see "Assault and Battery," § 78.

**GRATUITIES.\****Cross-References.*

- See "Charities"; "Gifts."
- In fraud of creditors, see "Fraudulent Conveyances," §§ 73-100.

**GRAVEL PITS.***Cross-Reference.*

- Right to dower in lands purchased by railroad company for gravel pit, see "Dower," § 47.

**GRAVEL ROADS.\****Cross-References.*

- See "Highways"; "Turnpikes and Toll Roads."

**GRAVES.***Cross-Reference.*

- See "Cemeteries."

**GRAVESTONES.***Cross-References.*

- See "Cemeteries," § 18.
- Liability of decedent's estate, see "Executors and Administrators," § 215.
- Testamentary provision for, see "Wills," § 9.

**GRAVEYARDS.\****Cross-Reference.*

- See "Cemeteries."

\*Annotation: Words and Phrases, same title.

**GREASE.\****Cross-Reference.*

Liability of street railroad company for injuries from greased tracks, see "Street Railroads," § 86.

**GREAT LAKES.***Cross-References.*

Admiralty jurisdiction, see "Admiralty," § 4.

Criminal jurisdiction, see "Criminal Law," § 97.

**GREAT PONDS.\****Cross-Reference.*

See "Waters and Water Courses," § 113.

**GREEK LETTER FRATERNITIES.***Cross-Reference.*

Liability of property of to taxation, see "Taxation," § 243.

**GREENBACKS.\****Cross-Reference.*

United States treasury notes as legal tender, see "Payment," § 10.

**GRISTMILLS.\****Cross-Reference.*

See "Manufactures," § 2.

**GROCERIES.\****Cross-Reference.*

Exemption from seizure and sale, see "Exemptions," § 39.

**GROSS ADVENTURE.***Cross-Reference.*

Loan on bottomry bond, see "Shipping," §§ 88-100.

**GROSS AVERAGE.\****Cross-References.*

See "Insurance," § 477; "Shipping," §§ 186-202.

**GROSS EARNINGS.\****Cross-References.*

Determination of amount for purpose of taxation of corporation, see "Taxation," § 382.

Taxation of corporations in general, see "Taxation," §§ 121, 140, 142, 148, 153, 157, 168.

Tax on receipts of corporation as breach of requirement of uniformity, see "Taxation," § 40.

**GROSS NEGLIGENCE.\****Cross-References.*

In general, see "Negligence," § 13.

Assumption of risk of gross negligence of fellow servant, see "Master and Servant," § 216.

Causing death, see "Death," § 14.

Grounds for exemplary damages, see "Damages," § 91.

In operation of railroads, see "Railroads," §§ 280, 339, 391, 427.

Of fellow servant, see "Master and Servant," § 202.

**GROSS TON.\****Cross-Reference.*

Construction of phrase as used in contract, see "Contracts," § 159.

**GROUND OF ACTION.\****Cross-Reference.*

See "Action."

**GROUND RENTS.\****Scope-Note.*

[INCLUDES nature and incidents of rents reserved in consideration of the conveyance of land; rights, powers, and liabilities of parties to such conveyances; and remedies relating thereto.

[EXCLUDES rent charges (see "Estates") and certain rents reserved in leases, etc. (see "Landlord and Tenant").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature of estate.
- § 2. Creation and validity.
- § 3. Conveyances and other transfers.

\*Annotation: Words and Phrases, same title.

- § 4. Apportionment.
- § 5. Merger.
- § 6. Redemption.
- § 7. Release or other extinguishment.
- § 8. — In general.
- § 9. — Lapse of time without payment or claim.
- § 10. Rights and liabilities of parties as to property.
- § 11. Liabilities for rent.
- § 12. Actions for rent.
- § 13. Lien.
- § 14. Distress.
- § 15. Re-entry and recovery of possession of property.

### *Cross-References.*

See "Eminent Domain"; "Landlord and Tenant"; "Mortgages"; "Perpetuities"; "Statutes," § 115.

As defect in title of vendor defeating contract of sale, see "Vendor and Purchaser," § 134.

Laws conclusively presuming a release of ground rent on which no payment or demand has been made for a certain time, as impairing obligation of contracts, see "Constitutional Law," §§ 109, 175.

Recovery of ground rent paid, see "Money Paid," § 5.

Rents reserved in leases, see "Landlord and Tenant," §§ 181-274.

Set-off in action to recover, see "Set-off and Counterclaim," § 35.

Taxation of ground rents, see "Taxation," §§ 60-67.

Validity of retroactive law providing that where no payment or demand for ground rent has been made for a certain time it shall be conclusively presumed to be extinguished, see "Constitutional Law," § 191.

### § 1. Nature of estate.

#### *Cross-Reference.*

See post, § 6.

(a) Act 1900, c. 207, which gives the lessee, after the expiration of 10 years from the date of the lease, the option to purchase the fee in the land at an amount fixed by the statute, operates only as an option extended to the lessee to buy the fee-simple in the land. The character of the leasehold interest is not changed thereby and remains the same until the option is exercised. The lessee may never avail himself of this option, and until he does his interest in the land remains unchanged and not enlarged and is a leasehold interest, which under the laws of Maryland is personal property in the hands of the administrator.—*Holzman v. Wager*, 114 Md. 322, 79 Atl. 205. (See Code, art. 21, § 93; art. 53, § 24.)

(b) The covenant to pay rent in a 99-year lease renewable forever, not only binds the lessee personally throughout the term, but

also runs with the land and binds the assignee of the term so long as he holds the legal estate.—*Horner v. Chaisty*, 101 Md. 593, 61 Atl. 283.

(c) The legal effect of a lease is not the same as that of a mortgage. In the former case, the lessee purchases his estate upon the consideration of an annual rent, with the privilege of buying in the reversion at the time and for the amount stipulated in the instrument. There is no obligation upon the lessee to redeem, and he cannot do so, except strictly in accordance with the terms of his contract; and if he should fail either by neglect or refusal to buy in the reversion, the lessor has no ground for complaint, because the relation of the debtor and creditor, except as to the payment of the stipulated rent, does not exist between them. In the case of a mortgage however, the relation of debtor and creditor is an essential condition, and the instrument is executed by the debtor

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

in favor of the creditor, for the sole purpose of securing the indebtedness. The estate granted is absolute in form, but subject to a proviso by which the conveyance is to become void upon payment to the creditor of the amount due him. Such a grant in a court of equity is always regarded as a mere security for the payment of the debt.—*Packard v. Corporation for Relief of Widows and Children of Clergy of P. E. Church*, 77 Md. 240, 26 Atl. 411.

(d) Primarily "ground rents" mean the rent payable to the lessor, but likewise the reversionary interest in the lots thus leased is generally designated and known as "ground rents." Hence where a testatrix directs that her "four several ground rents" should be sold for certain specified purposes, the term will be construed to include the reversionary interest.—*Ogle v. Reynolds*, 75 Md. 145, 23 Atl. 137.

(e) A ground rent payable at a definite future time is in effect a mortgage to secure a principal sum, interest on which is in the form of annual rent.—*Posner v. Bayless*, 59 Md. 56. (See *Montague v. Sewell*, 57 Md. 407.)

(f) Estates dependent upon leases for 99 years renewable forever, are exceedingly common in Maryland and particularly so in the city of Baltimore. Both the reversionary freehold and the leasehold estates are the subjects of daily transfers and assignments, and they constitute a considerable portion of the substantial wealth of the people. While the one estate is subject exclusively to the law that governs real property, the other is mainly controlled by the law that governs personalty;—the one estate passing by descent and being subject to the law of partition among heirs, while the other is the subject of administration, and is governed by the law that directs distribution of the personal estate. Both estates alike are the subjects of mortgage and judgment liens, and are constantly being sold and transferred in the enforcement of such charges.—*Myers v. Silljacks*, 58 Md. 319.

(g) The main objects of the lessor in making a lease for 99 years renewable forever, are the inducement thereby offered to improvement, and the security and receipt of

a clear annual rent, and the fine for renewal, based upon the full recognition of the reversionary estate in the lessor and those who may claim under him; while, on the part of the lessee, the object of the contract is the perpetual enjoyment of the land, with an encouragement to make such improvements as he would not be justified in making but with a view to, and the security for, such perpetual enjoyment.—*Myers v. Silljacks*, 58 Md. 319.

(h) Rent reserved in a lease for 99 years, renewable forever, is a rent service.—*Ehrman v. Mayer*, 57 Md. 612. [Cited and annotated in 53 L. R. A. 951, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced.]

(i) Land held under a lease from the city of Baltimore for 99 years, renewable forever, should for purposes of taxation be valued as leasehold estate, and not as fee simple estate, and the valuation should be made subject to the rent reserved in the lease.—*Philadelphia, W. & B. R. Co. v. Appeal Tax Court*, 50 Md. 397.

(j) A covenant in a lease from a city "to pay all taxes, assessments, and public dues which may hereafter be levied, charged, or assessed on the premises, or the yearly rent issuing therefrom," does not require the lessee to pay taxes on the reversionary interest of the city, as such interest is exempt by statute from taxation.—*Philadelphia, W. & B. R. Co. v. Appeal Tax Court*, 50 Md. 397.

(k) Leasehold interests though devised under leases for 99 years, renewable forever, and therefore partaking of the nature of perpetual interests, and in their origin designed to be and capable of being made perpetual, are nevertheless, in the view of our testamentary and descent laws, personal estates. The widow is not dowable of them, and they devolve upon the personal representatives of an intestate, and may be distributed in kind by the Orphans' Court like other personal property.—*Taylor v. Taylor*, 47 Md. 295; *Williams v. Holmes*, 9 Md. 281.

(l) Where a deed to a ground rent is defective for want of a seal the character of the estate is not changed, but remains personal property.—*Colvin v. Warford*, 20 Md. 357.

(m) A lease of land for 99 years, renewable forever, is a mere chattel interest, and not an estate in land from which dower can be claimed.—*Spangler v. Stanler*, 1 Md. Ch. 36.

## § 2. Creation and validity.

### Annotation.

Statutory provisions, see act 1884, c. 485; 1888, c. 395; 1900, c. 207; 1914, c. 371; Code, art. 16, § 250; art. 21, §§ 92-95; art. 45, § 17; art. 53, §§ 24-26; art. 75, § 73; art. 93, § 171; *Id.* [vol. 3], art. 21, § 97; Balto. City Rev. Charter, § 830.

(a) Act 1884, c. 502 (Code 1904, art. 53, § 26), providing that, if no demand for a ground rent is made for 20 years, such rent shall conclusively be presumed to have been extinguished and the landlord shall not thereafter set up any claim thereto or to the reversion, and giving those under disability requisite time to claim the rent, is not unconstitutional as destroying vested rights, since it was competent for the Legislature to fix the rules of evidence by which a tenant could show, against the landlord, that he held by adverse possession, and to destroy the remedy of the landlord if he did not demand rent within the time fixed.—*Safe Deposit & Trust Co. v. Marburg*, 110 Md. 410, 72 Atl. 839. (See Code 1911, art. 53, § 26.) [Cited and annotated in 38 L. R. A. (N. S.) 27, on what is marketable title.]

(b) Act 1906, p. 614, c. 337, adding an additional section (§ 215A) to Code 1888, art. 16, and providing a proceeding in chancery for the redemption of ground rents, where the title to the rent is vested in a trustee without power of sale, or in a life tenant with remainder over, vested or contingent, or in the holder of a defeasible estate without power of sale, etc., was not unconstitutional as depriving persons beneficially interested in the rent to be redeemed of their property without due process of law, in that it did not require that they be made parties or served with notice; they being parties by representation through the trustee, life tenant, or holder of the defeasible estate.—*Kingan Packing Ass'n v. Lloyd*, 110 Md. 619, 73 Atl. 887. (See Code 1911, art. 16, § 250.)

(c) Act 1906, p. 614, c. 337, adding an additional section (§ 215A) to Code 1888, art. 16, and authorizing a proceeding for the re-

demption of ground rents in certain cases, and providing that the costs shall be paid from the proceeds of the redemption, was not unconstitutional as impairing the obligation of the lease contract creating the rent.—*Kingan Packing Ass'n v. Lloyd*, 110 Md. 619, 73 Atl. 887. (See Code 1911, art. 16, § 250.)

(d) The covenant for renewal in a lease for 99 years, renewable forever, does not violate the rule against perpetuities, the property not being thereby placed extra commercium.—*Hollander v. Central Metal & Supply Co.*, 109 Md. 131, 71 Atl. 442; *Banks v. Haskie*, 45 Md. 207. (See *Brown v. Reeder*, 108 Md. 653, 71 Atl. 417.)

(e) An executor, having power of sale of certain mortgaged property for which a decree of sale under the mortgage had been procured, reported to the court a sale for the same sum as the mortgage, with the understanding that the purchaser should execute a 99-year renewable lease to the executor to hold subject to a ground rent equal to 6 per cent. on the price. The widow and devisee consented "to the agreement" by which the grantee was to give such sum "for a ground rent to be created," by conveying the property to the grantee and taking a 99-year lease from him, the leasehold interest to be held for the purposes mentioned in the will. On the same day a deed and lease were executed and recorded, and prior thereto a release of mortgage was recorded, reciting the payment of the mortgage by the purchaser, so that the executor might have good title to convey and that the grantee might make the contemplated lease. The deed also recited the payment of the mortgage by the purchaser and lessor, and that the consideration for such payment was the ground rent, and that the sale was made to carry out the intention of the parties as to creation of the ground rent. The lease contained no covenant for redemption, the lessee merely declaring that he took as lessee to hold under the trust declared by the will. In an action to have the lease declared merely a continuation of the mortgage, brought 40 years after the execution of such instruments and after the death of those knowing the facts, no oral evidence was introduced to show a different intent than appeared by the face of

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

the instruments. *Held*, an insufficient showing of an intention that the deed and ground rent should constitute a mortgage, but that it was the intention of the parties to create a ground rent on the property on which there was formerly a mortgage.—*Rosenstock v. Keyser*, 104 Md. 380, 65 Atl. 37.

(f) The creation of a redeemable ground rent is authorized under a power of attorney to mortgage.—*Posner v. Bayless*, 59 Md. 56.

(g) A lease for 99 years, renewable forever, of a riparian lot, running back to a wharf and line, "together with all the improvements thereon made, lanes, alleys, ways, waters, privileges, appurtenances, and advantages to the same belonging or in any wise appertaining," is comprehensive enough to convey every right in or appurtenant to the ground leased which the lessor had, including a wharf formed by natural accretion and artificial deposits, through an extension of the line 230 feet out into the water under a city ordinance.—*Williams v. Baker*, 41 Md. 523. [Cited and annotated in 58 L. R. A. 210, on accretion of shore lands.]

### § 3. Conveyances and other transfers.

(a) Under a 99-year lease there is no privity of contract between the owner of the reversion and the assignee of the term. Hence the liability of the latter for rent may be effectually destroyed by a deed made in good faith to one under an assumed name, and is as effectual as if named to the grantee by his true name, there being a manifest distinction between the assumed name of a person actually identified and a wholly fictitious name without an identified person behind it.—*Hartman v. Thompson*, 104 Md. 389, 65 Atl. 117. [Cited and annotated in 52 L. R. A. (N. S.) 988, 989, on liability of lessee, sublessee, or assignee for rent accruing after assignment or sublease.]

(b) Where the owner of a leasehold interest appointed her husband as her agent to sell the same, and have the assignment prepared, and he knew who was the real purchaser, it must be presumed that she intended to convey to such real purchaser though the assignment was made to him under an assumed name.—*Hartman v.*

*Thompson*, 104 Md. 389, 65 Atl. 117. [Cited and annotated, see *supra*.]

(c) The only duty which the assignee of a leasehold estate owes the reversioner, is the payment of the stipulated rent accruing due, and the taxes becoming demandable, so long, and so long only, as he continues to be the owner of the leasehold estate. Whenever he divests himself of this estate by a valid assignment to another, even though it be without a valuable consideration, the reversioner cannot complain.—*Hartman v. Thompson*, 104 Md. 389, 65 Atl. 117. [Cited and annotated, see *supra*.]

(d) There is no principal of law or morals which can require the termor to retain the term for the protection for the owner of the reversion, if he thinks it to his advantage to dispose of it, and it is not material that his grantee has no financial responsibility.—*Hartman v. Thompson*, 104 Md. 389, 65 Atl. 117. [Cited and annotated, see *supra*.]

(e) It is not a fraud upon the owner of the reversion if the owner of the term assigns it to another for the express purpose of terminating his future liability for rent, provided the conveyance is designed by both parties to divest the estate of the grantor and vest it in the grantee.—*Hartman v. Thompson*, 104 Md. 389, 65 Atl. 117. [Cited and annotated, see *supra*.]

(f) Where property is sold subject to a specified annual ground rent, the purchaser is not prejudiced by the fact that it is a sublease, where it appears that the sublease covenants against any increase in the rent; that the original rent, which is payable at the same time, is less in amount, and that the purchaser can protect himself by seeing that it is first paid.—*Connaughton v. Bernard*, 84 Md. 577, 36 Atl. 265.

(g) H. leased land to N. for 99 years, renewable, at the yearly rent of \$600. Thereafter N. subleased to plaintiffs for the residue of the term, reserving an annual rent of \$1,500, with a covenant that N. pay the rent of \$600. Later N. executed a release to plaintiffs for the residue of the term, "with the benefit of renewal forever subject to the payment of the annual rent of \$600, as mentioned" above, but free from all other rent.

*Held*, that the deed conveyed the whole term, subject only to the rental of \$600.—*Kraft v. Egan*, 76 Md. 243, 25 Atl. 469.

(h) Under Code 1888, art. 21, § 1, which provides that no estate above 7 years shall pass or take effect unless the deed conveying the same shall be executed, acknowledged, and recorded, leasehold estates for 99 years do not pass title, so as to relieve the grantor from the payment of rent, until the deeds conveying such estates have been recorded.—*Nickel v. Brown*, 75 Md. 172, 23 Atl. 736. (See Code 1911, art. 21, § 1.)

(i) Where a deed of land, followed by a lease for 99 years to the original owner of the land at an annual rental of 12 per cent. on the consideration stated in the deed, is in fact intended as a mere security for the money loaned, the transaction will be considered usurious.—*Gaither v. Clarke*, 67 Md. 18, 8 Atl. 740.

(j) On the same day on which a deed was executed the grantee made a long renewable lease of the same premises to the grantor, by the terms of which a large annual rent was reserved to the lessor, and a covenant entered into by which he might, after two years, upon payment of the amount of the deed, give a good deed to the lessees in fee simple of said premises free from the rent reserved. Subsequently the lessees made an assignment of the lease to the appellant. The money obtained from the lessor being in fact a loan, and the deed and lease but means of security for the amount agreed to be paid, *held*, that the lessor violated the usury laws of the state by receiving a large bonus for the loan, and an excessive rate of interest in the form of rent.—*Grand United Order of Odd Fellows' Joint-Stock Ass'n v. Merklin*, 65 Md. 579, 5 Atl. 544.

(k) Where the real nature of a transaction purporting to be the purchase of a redeemable ground rent is shown by the attendant facts and by extrinsic evidence to be a usurious loan, its apparent and formal regularity will not prevent the operation of the statutes against usury, nor will the fact that the ground rent has been transferred to one ignorant of the illegality of the original transaction.—*Montague v. Sewell*, 57 Md. 407.

(l) A. owned a leasehold interest, which he inadvertently supposed to be an estate in fee. He leased the land to B., who paid him rent for 25 years, when it was discovered that A.'s term had long since expired. B. then paid the reversioner a sum of money for arrearages of rent, and bought from him the fee. A. distrained for rent, and B. sued him in trespass q. c. f. for the entry. *Held*, that B. was not estopped from denying A.'s title, and that he had a right to purchase the reversion, subject to any equity that A. might have to demand a renewal of his lease.—*Presstman v. Silljacks*, 52 Md. 647.

[Cited and annotated in 53 L. R. A. 936, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced; in 38 L. R. A. (N. S.) 864, on right of tenant to show that landlord parted with or lost his title to a third person during tenancy.]

(m) Where the assignment of a mortgage of a leasehold estate for more than seven years, made by a separate instrument, is not recorded, no title passes, and the assignee is not bound to pay the rent and taxes which accrue and become due after the assignment.—*Lester v. Hardesty*, 29 Md. 50.

(n) A leasehold estate for 99 years, renewable forever, so far partakes of the reality that the title can only pass by deed executed with all the solemnities which are prescribed by law for the sale and conveyance of real estate, different in all respects from the sale and transfer of personal chattels, the title to which may pass by simple delivery accompanying the sale; and a vendor's lien for purchase money of such an estate may be enforced in equity.—*Bratt v. Bratt*, 21 Md. 578. [Cited and annotated in 20 L. R. A. 102, on parol evidence as to consideration of deed.]

(o) H., who, as the assignee of a lease, was liable for the performance of its covenants, executed a bond of conveyance to M., who entered into possession of the premises. *Held*, that, since the conveyance to M. did not transfer the entire interest of H., H. was not released from the covenants as such release could only be affected by transferring to M. his entire interests, and thereby making M. the assignee of the lease.—*Mayhew v. Hardesty*, 8 Md. 479.



(p) A lot of ground being subject to a ground rent of \$75, a covenant, in an underlease of a part of it, that the underlessee "should hold the part underlet, free and clear of the demand of any person for any other or greater rent than above reserved thereon," does not run with the land, nor charge the residue of the lot with the whole rent.—*Wahl v. Barroll*, 8 Gill 288.

#### § 4. Apportionment.

##### Cross-Reference.

See post, §§ 6-10.

(a) Where a city lot having a frontage of 28 feet and a depth of 123 feet was taken for public use, except the rear 33 feet thereof, which lot was subject to an irredeemable ground rent of \$300, under a lease for 99 years, renewable forever, and it appeared that the value of the ground rent on the entire lot, ascertained by capitalizing the \$300 at 3 per cent., was \$10,000, and that the value of the ground rent on the land not taken, ascertained by capitalizing it at 4 per cent., was \$7,500, and that the value of the remaining lot after the construction of the improvement for which the land was taken would be \$15,000, the ground rent should be apportioned, and the owners of the rent charge awarded such part of damages for the land taken as represented the capitalized rental value of the land taken.—*City of Baltimore v. Latrobe*, 101 Md. 621, 61 Atl. 203; *Latrobe v. City of Baltimore*, Id.

(b) Where property has been advertised by an administrator for sale subject to a specified annual ground rent, it cannot be urged against the validity of the sale that the rent is under a sublease, and that the property is a part only of the original demised premises rented in gross, where it appears that the rent under the sublease has been accepted by the owner of the original reversion for more than 20 years, and that no more rent has ever been exacted or demanded than that apportioned.—*Connaughton v. Bernard*, 84 Md. 577, 36 Atl. 265.

(c) Where the landlord has for a number of years collected only a fixed portion of the entire rent from each one of the several parts into which the lessee has subdivided a demised lot, that course of conduct on his

part coupled with other circumstances may furnish reasonable grounds of presumption that he had assented to the apportionment of the entire rent between the several parts of the lot in the proportion in which he had thus so long collected it from them.—*Connaughton v. Bernard*, 84 Md. 577, 36 Atl. 265; *Barnitz v. Reddington*, 80 Md. 622, 24 Atl. 409. (See *Smith v. Heldman*, 93 Md. 343, 48 Atl. 946.)

(d) H., being the owner of the fee, leased the property, of which the lot in question was a part, to one Q., in 1793, for 99 years, renewable forever, reserving a yearly rent of 2 pounds and 14 shillings. In the same year Q. sublet to P. the lot in question reserving an annual rent of 1 pound and 4 shillings and no more, and by mesne conveyances P.'s title became vested in appellants. None of the conveyances of this lot mentioned any rent resting upon it, or issuing out of it, except this 1 pound and 4 shillings. There was some proof that for more than 50 years no other rent had been exacted. *Held*, that it was reasonable to conclude that the lot was not liable for any other rent; and that there had been an apportionment of the rent resting upon the original lot, the lot in question being about one-fifth of the original lot.—*Barnitz v. Reddington*, 80 Md. 622, 24 Atl. 409.

(e) Where a portion of the premises have been released, rent may be apportioned.—*Ehrman v. Mayer*, 57 Md. 612. [Cited and annotated in 53 L. R. A. 951, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced.]

(f) Where the lessor and lessee have jointly conveyed a part of the premises, the rent may be apportioned.—*Worthington v. Cooke*, 56 Md. 51.

#### § 5. Merger.

##### Cross-References.

See post, § 9.

##### Annotation.

See Code, art. 64, §§ 1, 2.

(a) Where a lease of property for a church was for a term of 99 years, renewable forever, subject to the payment of certain rent and the performance of conditions as to the

use of the property, the lease created a conditional estate in the church corporation, liable to be destroyed by a failure of the lessee to perform the conditions and by re-entry of the lessor, his heirs or assigns.—*Starr v. Minister & Trustees of Starr M. P. Church*, 112 Md. 171, 76 Atl. 595.

(b) Where, after the execution of a lease of property for a church for 99 years, subject to certain conditions with reference to the use thereof, the lessor devised the property to the lessee subject to the same conditions, the leasehold merged in the devise.—*Starr v. Minister & Trustees of Starr M. P. Church*, 112 Md. 171, 76 Atl. 595.

(c) Property sold as leasehold, subject to a ground rent of \$37.50 held not subject to a further rent of \$48.00 under a sublease, since the \$48.00 rent was merged and extinguished by the execution of a deed which conveyed and released to a trustee "all the right, title, claim and demand" of the grantor in and against the lot of ground, for or on account of the rent of \$48.00 per annum reserved under the original lease, "to the end that the lot of ground may and hereafter be subject to the payment to her of the rent of \$37.50 and no more, as reserved by the lease, it being the intention of the deed to remove all doubts as to the entire extinguishment of the rent of \$48.00 by the deed from S. to O."—*Lewis v. Kinnaird*, 104 Md. 653, 65 Atl. 365.

(d) Where a woman, having a leasehold estate in her own right, married, and her husband went into possession, afterwards purchasing the reversion, such purchase did not operate as a merger of the leasehold estate, under act 1853, c. 245, providing for the protection of the wife's separate property from liability for her husband's debts. No intention that a merger should take place being shown.—*Clark v. Tennison*, 33 Md. 85. (See Code, art. 45, § 1.)

(e) The question of merger is largely one of intention, actual or presumed, of the parties, founded on the reason or necessity of the case.—*Polk v. Reynolds*, 31 Md. 106.

(f) A leasehold interest was conveyed to a husband and wife. The reversion was afterwards conveyed to the husband alone, "to

be held by him, his heirs and assigns, in fee simple," that the rent might "cease and determine," and for "the purpose of extinguishing the ground rent" reserved in the lease. Held, that, in absence of proof to sustain a separate estate in the wife according to the acts on that subject, the marital right of the husband to extinguish the leasehold interest was unquestionable, and that the conveyance to him of the reversion had that effect.—*Lawes v. Lumpkin*, 18 Md. 334.

(g) Where a sublessee becomes the assignee of the reversion of the subleased lot, the sublease is by operation of law merged and extinguished, and he holds as if no sublease had been made.—*Wahl v. Barroll*, 8 Gill 288.

### § 6. Redemption.

(a) Act 1884, c. 485 (Code 1904, art. 21, § 88), relative to the redemption of fifteen-year leases, held to have no application to a lease executed before its enactment, although the lessor at the time of its execution did not have the legal title.—*Poultney v. Emerson*, 117 Md. 655, 84 Atl. 53. (See Code 1911, art. 21, § 92; art. 53, § 24.)

(b) Act 1884, c. 485, act 1888, c. 395, and act 1900, c. 207 (Code 1904, art. 21, §§ 88, 89), relative to the redemption by tenants of fifteen-year leases being remedial in purpose, should be liberally construed.—*Poultney v. Emerson*, 117 Md. 655, 84 Atl. 53. (See Code 1911, art. 21, §§ 92, 93; art. 53, § 24.)

(c) A railroad was leased to another railroad under act 1908, c. 126, providing that it should be lawful for any railroad company incorporated under the laws of Maryland to lease its road and franchises for the operation thereof to any other railroad, for any period of time. The lease in this case reserved a definite rent for the term of 999 years. Code 1904, art. 21, §§ 88, 89, provided that all leases or subleases of land for a period of longer than 15 years shall be redeemable at the option of the tenant. These statutes were the outgrowth of earlier legislation intended to provide for the extinguishment of ground rents. Held, that the lessee of the railroad could not redeem under the last-mentioned statute.—*Buckler*

*v. Safe Deposit & Trust Co.*, 115 Md. 222, 80 Atl. 899. (See Code 1911, art. 21, §§ 92, 93; art. 23, § 284; art. 53, § 24.)

(d) Where a ground lease contains no provision for the redemption of the rent reserved, it is redeemable by virtue of act 1888, p. 645, c. 395 (Code 1904, art. 21, § 88).—*Kingan Packing Ass'n v. Lloyd*, 110 Md. 619, 73 Atl. 887. (See Code 1911, art. 21, § 92; art. 53, § 24.)

(e) Act 1906, p. 614, c. 337, adding an additional section (§ 215A) to Code 1888, art. 16, and providing for the redemption of ground rents, where the title is vested in a trustee without power of sale, or in a life tenant with remainder over, or in the holder of a defeasible estate without power of sale, is not limited to cases where the entire estate in the rent is held by a trustee, but applies as well to the redemption of a ground rent only an undivided portion of which is owned by a trustee.—*Kingan Packing Ass'n v. Lloyd*, 110 Md. 619, 73 Atl. 887. (See Code 1911, art. 16, § 250.)

(f) A lease for 99 years, beginning March 8, 1864, renewable forever at an annual ground rent payable in equal semiannual installments on the 1st days of March and September provided that, on the erection of buildings on the leased premises, separate leases for each house built and the lot, liable for its proportionate part of the whole rent, would be delivered. The owner of the leasehold interest subdivided a part of the estate into lots smaller than those specified in the lease, and the owner of the reversion executed a separate lease of each lot for 99 years, commencing September 1st, renewable forever at a rental greater than that stipulated for in the original lease and payable at other times. *Held*, that the second lease was a separate transaction, and the rent reserved thereby was redeemable under act 1888, p. 645, c. 395, providing that rents reserved by leases for a longer period than 15 years shall be redeemable.—*Maulsby v. Page*, 105 Md. 24, 65 Atl. 818. (See Code, art. 21, § 92; art. 53, § 24.)

(g) Act 1884, p. 649, c. 485, providing that leases of land for a longer period than 15 years shall be redeemable after the expira-

tion of 15 years at the option of the tenant, for a sum of money equal to a designated capitalization of the rent reserved, applies as well to leases of improved as of unimproved land.—*Swan v. Kemp*, 97 Md. 686, 55 Atl. 441. (See Code, art. 21, § 92; art. 53, § 24.)

(h) Code 1888, art. 21, § 85, provides for the redemption of rents reserved under 15-year leases on 6 months' notice to the landlord. Article 16, §§ 26-31, provide that one entitled to any right as to property may bring suit against any person denying such right, and the court may make a declaration that he is so entitled without any further relief being asked or given, but that such decree shall not be made where plaintiff, "able to seek further relief than a mere declaration of title, omits to do so." A lessee brought a bill in equity to redeem rents, without giving the required notice, his bill reciting that he did not know to whom the notice should be given, and asking that the court "advise and direct him in the exercise of his right to redeem." *Held*, that, as he might have given the notice to each of the parties he thought it expedient to make defendants, but did not do so, he was not entitled to a construction of the will under which defendants claimed title.—*Plaenker v. Smith*, 95 Md. 389, 52 Atl. 606. (See Code 1911, art. 16, §§ 27-32; art. 21, § 92; art. 53, § 24.)

(i) In view of the express terms of Code 1888, art. 21, § 85, that rent shall be redeemable "after a notice of six months," where a bill in equity to redeem was filed without the giving of notice the suit will be dismissed, and not remanded.—*Plaenker v. Smith*, 95 Md. 389, 52 Atl. 606. (See Code 1911, art. 21, § 92; art. 53, § 24.)

(j) In a bill in equity to redeem rents under a lease, a failure to give the required six months' notice to the landlord required by Code 1888, art. 21, § 85, was not cured by a prayer for general relief.—*Plaenker v. Smith*, 95 Md. 389, 52 Atl. 606. (See Code 1911, art. 21, § 92; art. 53, § 24.)

(k) Where children had a vested interest in certain rents, but the legal title was in a trustee for their benefit during their

minority, and his term had not expired, a bill by the lessee to procure a conveyance to himself of the reversion ~~in~~ extinguishment of the rents should have joined all the persons interested as defendants.—*Plaenker v. Smith*, 95 Md. 389, 52 Atl. 606.

(l) A bill in equity to redeem rents is in the nature of specific performance, and under it the court could construe a will under which the defendants claimed title.—*Plaenker v. Smith*, 95 Md. 389, 52 Atl. 606.

(m) Where a lease for 99 years, renewable forever, to an alleged corporation, is made before the act of 1888, c. 395, but is void by reason of the lessee's failure to incorporate, the holder of the leasehold interest cannot require of the reversioner a confirmatory lease, since the provision of the act of 1888 making ground rents redeemable after 10 years does not apply to leases made before its passage.—*Jones v. Linden Bldg. Ass'n*, 79 Md. 73, 29 Atl. 76. (See Code, art. 21, § 92; art. 53, § 24.)

(n) The owner of land and B. executed a deed of the same to a purchaser for \$4,500, the deed reciting that the owner had previously agreed to lease the land for 99 years to B., at whose request he had sold the land to the purchaser, and that B. had joined in the deed to convey his interest under the agreement. On the same day the purchaser executed a lease of the land to B. for 99 years, in consideration of \$1,000 and covenant to pay rent, the lease stipulating that the purchaser at any time after 10 years from date, and within 1 year thereafter, and during the continuance of the lease, on payment of \$3,500 and arrears of rent, would convey the fee in the land to B. Before the owner conveyed the property it was assessed to him as vacant land. After the conveyance the improvements thereon were assessed to B. Held, that the lease was not redeemable at any time after the expiration of 10 years, but only within 1 year thereafter.—*Packard v. Corporation for Relief of Widows and Children of Clergy of P. E. Church*, 77 Md. 240, 26 Atl. 411.

(o) Where a lease for 99 years, renewable forever, executed March 9, 1864, created an irredeemable annual ground rent, and pro-

vided that on the erection of buildings on the leased premises the lessor, his heirs or assigns, etc., would at the request of the lessee, his executors, assigns, etc., execute and deliver to him or them a separate lease for each house so built, and its lot, thereby apportioning the rent, the rents reserved by such separate leases will not be redeemable under act 1888, c. 395, providing that all rents reserved by leases or subleases of land made after April 5, 1888, for a longer period than 15 years, shall be redeemable at any time after the expiration of 10 years from the date of such lease or sublease, at the option of the tenant.—*Flook v. Hunting*, 76 Md. 178, 24 Atl. 670. (See Code, art. 21, § 92; art. 53, § 24.)

(p) Act 1888, c. 395, providing that "all rents reserved by leases or subleases of lands, made in this state after April 5, 1888, for a longer period than 15 years, shall be redeemable at any time after the expiration of 10 years from the date of such lease or sublease, at the option of the tenant, after a notice of 6 months to the landlord, for a sum of money equal to the capitalization of the rent reserved, at a rate not to exceed 6 per centum," applies to a lease for 14 years, with a covenant to renew for a like period with the same covenants.—*Stewart v. Gorter*, 70 Md. 242, 16 Atl. 644, 2 L. R. A. 711. (See Code, art. 21, § 92; art. 53, § 24.)

(q) The tenant cannot by covenant estop himself to take advantage of the option, since the law was not enacted merely for his benefit, but from considerations of public policy.—*Stewart v. Gorter*, 70 Md. 242, 16 Atl. 644, 2 L. R. A. 711.

## § 7. Release or other extinguishment.

### § 8.— In general.

#### Cross-Reference.

See post, § 9.

(a) The purchasers of the reversion attempted to extinguish the ground rent by an agreement with B., who had become the owner of the undivided interest not owned by the purchasers of the reversion in the lots apportioned to meet the ground rent, and who was also the owner of all the partitioned portion of the estate not owned by them, except certain lots which he and

another held as trustees. The agreement failed to include as trustees either B. or his co-trustee. *Held*, nevertheless, that the agreement extinguished the ground rent on the lots held in trust, since by the partition deed the purchasers of the reversion were estopped to assert the ground rent against any of the property except that apportioned thereto, and since the whole interest in such apportioned property was included in the agreement.—*Jones v. Rose*, 96 Md. 483, 54 Atl. 69.

(b) Where certain of the parties to the partition deed subsequently purchased the fee or reversion to the whole estate, the estoppel arising from the partition deed also bound them, as owners of the reversion, from asserting that any of the property except that specially appropriated thereto was subject to the ground rent, especially when they, as owners of the reversion, recited such apportionment in a deed designed to extinguish the ground rent.—*Jones v. Rose*, 96 Md. 483, 54 Atl. 69.

(c) Where the owners in common of an estate subject to a ground rent partitioned the land among themselves, leaving, however, certain lots undivided, the rental of which was specially appropriated by the partition deed to the ground rent of the whole estate, such appropriation, as between the parties and those claiming through them, exonerated the residue of the property from the ground rent.—*Jones v. Rose*, 96 Md. 483, 54 Atl. 69.

#### § 9.—Lapse of time without payment or claim.

(a) Act 1884, p. 670, c. 502 (Code 1904, art. 53, § 26), providing that, if no demand for a ground rent is made for 20 years, such rent shall conclusively be presumed to have been extinguished, and the landlord shall not thereafter set up any claim thereto, or to the reversion of the lot out of which it issued, and giving those under disability requisite time to make claim for the rent, does not simply bar the rent, but extinguishes the reversionary interest, and casts on the tenant the landlord's interest and fee-simple title where no demand is made for the 20 years.—*Safe Deposit & Trust Co. v. Marburg*, 110 Md. 410, 72 Atl. 839. (See Code

1911, art. 53, § 26.) [*Cited and annotated in 38 L. R. A. (N. S.) 27, on what is marketable title.*]

(b) A ground rent of "two pepper corns," or even a rent of substantial value, is barred under Code 1904, art. 53, § 26, which provides that whenever there has been no demand or payment for more than 20 consecutive years of any specific rent reserved out of a particular lot, under any form of lease, such rent shall be conclusively presumed to have been extinguished, and the landlord shall not thereafter set up any claim thereto, or to the reversion in the lot out of which it issued, or have the right to institute any suit, action or proceeding whatsoever to recover the rent.—*Lewis v. Kinnaird*, 104 Md. 653, 65 Atl. 365. (See Code 1911, art. 53, § 26. See also, *Speed v. Smith*, 4 Md. Ch. 299.)

(c) In 1851 C. and wife leased a lot to R. for 99 years, for an annual rent of \$230; and the lease was assigned to J., who divided the lot in to two parts, designated "A" and "B," and subleased part B to H. for \$230 per annum, and part A to different persons. In 1883 defendant became the owner of the reversion in fee of the entire lot, with the original rent; and, though there was no formal release of part A from liability for such rent, it was collected from the sublessee of part B from 1883 to 1899. *Held*, that the collection of the entire amount for part B did not estop defendant from distraining the chattels of the sublessee of part A for arrears of rent, since such collection did not raise the presumption of a release of part A from liability.—*Smith v. Heldman*, 93 Md. 343, 48 Atl. 946.

(d) Premises were leased in 1771 for 99 years. In 1802 the tenant conveyed the leasehold in trust for his wife for her life, remainder to their four children. In 1832 a daughter died, leaving her husband and three children. In 1852, on the death of the equitable life tenant, a bill was filed for the sale of the leasehold and distribution of the proceeds, the three surviving children of the life tenant and the children of the deceased daughter being parties, but her husband was not a party. In such suit the estate was sold and proceeds divided. The purchaser at

such sale went into possession. On the expiration of the lease, in 1870, the tenant continued to occupy, and in 1886 received a new lease, which he assigned to plaintiff, who in 1897 purchased the fee. *Held*, that plaintiff's title was merchantable, since though on the death of the daughter, in 1882, her husband, under the law then existing, inherited her interest in the chattel real absolutely, instead of its going to her children, such interest expired in 1870, with the expiration of the lease, unless extended on application to a court of equity, and he and his heirs, not having asserted any rights or paid any rents or taxes for nearly 50 years, have been guilty of such laches that their claims, if made, would not now be considered.—*A. S. Abell Co. v. Firemen's Ins. Co.*, 98 Md. 596, 49 Atl. 334. [Cited and annotated in 38 L. R. A. (N. S.) 6, 8, 39, on what is a marketable title.]

(e) Where the relation of landlord and tenant is once established, under a sealed lease for 99 years, renewable forever, the mere fact that the landlord has failed to demand the rent will not justify the presumption that he has released or extinguished his right to it under the lease. The release or extinguishment of such a rent could only be by deed.—*Myers v. Siljacks*, 58 Md. 319. [Cited and annotated in 14 L. R. A. 151, on liability of assignee of leasehold for rent; in 52 L. R. A. (N. S.) 980, on liability of lessee, sublessee, or assignee for rent accruing after assignment or sublease; in 53 L. R. A. 946, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced.] (See *Smith v. Heldman*, 93 Md. 343, 48 Atl. 946; *Worthington v. Lee*, 61 Md. 530; *Ehrman v. Mayer*, 57 Md. 612; *Campbell v. Shipley*, 41 Md. 81; *Wahl v. Barroll*, 8 Gill 288.)

(f) Where it is conceded that the relation of landlord and tenant under a perpetual lease once existed, the fact that no part of the original rent had, in the memory of any one living, been paid by any owner of the leasehold interest in a lot which was a portion of the original tract leased, and that this tract had always been treated as discharged from the payment of rent, raises no presumption of some act of the parties in interest leaving this lot free from payment of any part of the original rent.—*Ehrman*

*v. Mayer*, 57 Md. 612. [Cited and annotated in 53 L. R. A. 951, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced.]

## § 10. Rights and liabilities of parties as to property.

### Annotation.

Taxation of land under perpetual lease.—46 L. R. A. (N. S.) 284, note.

Effect of condemnation upon rights in ground rent.—21 L. R. A. 221, note.

(a) The owner of the reversion and of an irredeemable ground rent under a lease for 99 years, renewable forever, can only recover for injuries to the improvements to the extent that the security for the payment of the rent is impaired and the value of the reversion consequently lessened.—*Whiting-Middleton Const. Co. v. Preston*, 121 Md. 210, 88 Atl. 110.

(b) Where a lease of property for a church extended for 99 years, renewable forever, on performance of certain conditions as to the use of the property, the reversion was subject to conveyance or devise by the lessor.—*Starr v. Minister & Trustees of Starr M. P. Church*, 112 Md. 171, 76 Atl. 595.

(c) Though a covenant to pay ground rent in a lease not only binds the original lessee personally throughout the term, but runs with the land and binds an assignee of the term so long as he holds the legal estate, an assignee of a recorded mortgage on the leasehold after payment and execution of a valid release was not liable for breach of such covenant by the holder of the equity of redemption, notwithstanding the release was not recorded.—*Horner v. Chaisty*, 101 Md. 593, 61 Atl. 283.

(d) Where a portion of a city lot subject to an irredeemable ground rent under a lease for 99 years, renewable forever, was taken for public use, the fact that the portion not taken was sufficient security for the rent charge did not establish that the owners of the ground rent were not entitled to compensation.—*City of Baltimore v. Latrobe*, 101 Md. 621, 61 Atl. 203; *Latrobe v. City of Baltimore*, Id.

(e) Rent due before an assignment of the lease by the lessor belongs to the lessor, and not to the assignee.—*Wise v. Pfaff*, 98 Md.

576, 56 Atl. 815; *Outtoun v. Dulin*, 72 Md. 536, 20 Atl. 134.

(f) Under a mortgage of a leasehold, covenanting for payment of ground rent and taxes, and permitting the mortgagor or his assigns to retain possession till default, the term vests in the mortgagee on the first default in such payment, so that one to whom the mortgagor has assigned the property is not liable for a subsequent default.—*Commercial Building & Loan Ass'n v. Robinson*, 90 Md. 615, 45 Atl. 449.

(g) Where a mortgagee of a leasehold interest covenants for payment of ground rent and taxes, and permits the mortgagor or his assigns to remain in possession till default, the subsequent assignee of the mortgagor, though not liable to the mortgagee as to the mortgage debt, he not having assumed it, is liable to him for the first rent and taxes as to which there is default,—it having been paid by the mortgagee, and the premises not selling for enough to satisfy the mortgage, as the covenant runs with the land; and it is immaterial that immediately on the default the term vests in the mortgagee.—*Commercial Building & Loan Ass'n v. Robinson*, 90 Md. 615, 45 Atl. 449.

(h) In the absence of a provision in a mortgage of a leasehold interest permitting the mortgagor or his assigns to retain possession of the property till default, the legal title vests in the mortgagee, and he has the absolute right of possession till the mortgage is paid; and therefore one to whom the mortgagor afterwards assigns the premises is not liable to the mortgagee on the covenant in the mortgage for payment of ground rent and taxes, there being no privity of contract between him and the mortgagee.—*Commercial Building & Loan Ass'n v. Robinson*, 90 Md. 615, 45 Atl. 449.

(i) The assignee of the mortgagor of a leasehold interest being liable to the mortgagee on the covenant in the mortgage for payment of the ground rent and taxes, permission being retained for the mortgagor or his assigns to remain in possession till default, the mere sale of the premises under foreclosure of mortgage does not deprive the mortgagee of the right to enforce the

liability, though he has no interest in the property after the sale; the relation of the parties at the time of the default determining the liability, and the mortgagee not only having paid the taxes and rent, but having received from the sale less than the amount of the mortgage.—*Commercial Building & Loan Ass'n v. Robinson*, 90 Md. 615, 45 Atl. 449.

(j) Where land is leased for a term of years, the whole interest is comprehended in the term and in the reversion. The lessee and the reversioner together own the land; their combined interests make up the ownership. When the land therefore is to be assessed, the assessment must be levied on lessee and reversioner in proportion to the value of their interests.—*Gittings v. Worthington*, 67 Md. 139, 9 Atl. 228. (See *Gluck v. City of Baltimore*, 81 Md. 315, 32 Atl. 515.)

(k) The common-law doctrine of waste is not, in all its strictness, applicable to the Baltimore perpetual leases of ground, and the right to interfere with the tenant in the management of his property only exists under circumstances which would justify the exercise of the preventive jurisdiction of a court of equity.—*Crowe v. Wilson*, 65 Md. 479, 5 Atl. 427, 57 Am. Rep. 343.

(l) The tenant under a 99-year lease renewable forever, has the power to take down and build up, alter, remodel and reconstruct at his own pleasure so long as he does not render the reversioner's rent insecure; but, where the tenant is about to remove the building on the leased premises and this removal would greatly impair and endanger the security for the rent reserved, equity will interfere by injunction.—*Crowe v. Wilson*, 65 Md. 479, 5 Atl. 427, 57 Am. Rep. 343.

(m) In 1772 a lease of land in Baltimore for 99 years, renewable forever, was made, reserving a small rent. Subsequently a sublease of part was made. No rent was paid on the original lease for 50 years before the expiration of the term. A bill was filed seven years after the termination of the leasehold estate for a renewal of the same and injunction against ejectment against over 80 defendants, many of them non-resi-

dents, and the interest of many of them in the property not being clearly shown. *Held*,

1. That the delay in filing the bill was not a ground for refusing relief by specific performance, provided proper parties were within the jurisdiction of the court. 2. That the lease was not forfeited by conveyances in which the title of the original lessor was disaffirmed. 3. That the plaintiff, upon bringing into court to be paid to the parties that may be shown to be entitled the amount of the rent due such parties to the date of the decree, together with the renewal fine, a decree for specific performance would be made against the parties shown to have title; that the parties within the jurisdiction of the court would be required to execute a renewal of the lease, while as to the parties beyond the jurisdiction, the decree could only stand as an adjudication of the subject-matter.—*Worthington v. Lee*, 61 Md. 530. (See Code, art. 21, § 95.) [Cited and annotated in 50 L. R. A. 581, on service of process constituting due process of law; in 23 L. R. A. (N. S.) 1136, as to whether jurisdiction of suit for specific performance of land contract within territorial jurisdiction, may rest upon constructive service upon nonresident.]

(n) Where a deed of sublease provided for a new sublease to the grantee or his assigns, with "a covenant for perpetual renewments," the renewed lease should take effect at the expiration of the original term.—*Boyle v. Peabody Heights Co.*, 46 Md. 623. (See Code, art. 21, § 95.)

(o) Where the original term of a lease for 99 years, renewable forever, has expired, and the owner of the leasehold interest has failed to obtain a renewal within the term pursuant to the provisions of the lease, equity will compel the owner of the reversion to execute a new lease, if the application be made in a reasonable time and all arrears of rent and the renewal fee be paid.—*Banks v. Haskie*, 45 Md. 207. (See Code, art. 21, § 95.) [Cited and annotated in 41 L. R. A. (N. S.) 387, on covenant to renew lease as affected by conveyance.]

(p) In the absence of actual ouster, a trespasser, by taking and recording an assignment of a lease, is presumed to hold under the lease.—*Campbell v. Shipley*, 41 Md. 81.

[Cited and annotated in 53 L. R. A. 946, 950, 951, 952, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced.]

(q) An agreement, made by a lessee for years, the effect of which was to release and abandon certain easements in the use of an alley and a division wall which were created by the original deed, could only operate to the extent of the lessee's own interest and estate, and would not bind the reversioner unless he was a party to it, or it was made with his knowledge and acquiescence.—*Glenn v. Davis*, 35 Md. 208. [Cited and annotated in 18 L. R. A. 539, on effect of nonuser of easement; in 2 L. R. A. (N. S.) 832, on presumption of abandonment from failure to maintain easement.]

(r) The lessee for 99 years, renewable forever, and not the owner of the fee, is the proprietor, having the right to assent to the paving of a street in the city of Baltimore.—*Holland v. City of Baltimore*, 11 Md. 186, 69 Am. Dec. 195. (See Balto. City Rev. Charter, § 830.) [Cited and annotated in 22 L. R. A. 704, on injunction against collection of illegal taxes; in 44 L. R. A. (N. S.) 696, on right of lessee to sign petition for improvements.]

(s) Where a lessee enters under a lease and pays rent for a number of years, he cannot then remain in possession and refuse to pay rent because the lease was not properly executed.—*Williams' Ex'rs v. City of Annapolis*, 6 H. & J. 529.

### § 11. Liabilities for rent.

(a) The assignee of a leasehold interest under a lease of ground for 99 years, renewable forever, is liable for the payment of the rent reserved in the lease so long as his privity of estate remains undisturbed by reassignment or otherwise, though the improvements be destroyed.—*Whiting-Middleton Const. Co. v. Preston*, 121 Md. 210, 88 Atl. 110.

(b) By accepting the assignment of, and permitting an entering into, possession of the land, the assignee subjects himself to all the covenants that run with the land, including that for the payment of ground rent.—*Myers v. Silljacks*, 58 Md. 319. [Cited and annotated, see *supra*, § 9.]

(c) A covenant to pay rent, which runs with the land, as in a lease for a renewable



term of 99 years, binds the lessee during the whole term, notwithstanding there has been an assignment of the term by the lessee and an acceptance of the rent by the lessor from the assignee.—*Worthington v. Cooke*, 56 Md. 51.

(d) In 1785, A. leased from B. and C., for 99 years, renewable forever, a lot of ground at a fixed rent, and covenanted in the lease to pay the rent. He entered upon the property, and paid the rent until 1803. The lease was not acknowledged and recorded agreeable to law, and an action of covenant at law brought against A. in 1812 by B. and C. to recover the rent failed from the defects of the lease. The lessee and those claiming under him remained in undisturbed possession of the property, and in 1815 the lessors filed a bill to compel A. to account for the rents and profits from 1803 and to accept a new lease formally executed. *Held*, the lessors being entitled to recover, that interest was properly decreed on the rent in arrear.—*Williams' Ex'rs v. City of Annapolis*, 6 H. & J. 529.

## § 12. Actions for rent.

### Cross-References.

See ante, § 10.

Pleading limitations, see "Limitation of Actions," § 182.

Set-off, see "Set-Off and Counterclaim," § 35.

(a) In an action for rent, an instruction to find for plaintiff unless the jury should find that, before suit was brought, defendant had assigned the leasehold interest "by a good and sufficient conveyance thereof" was not objectionable as submitting to the jury a question of law, where, in the following instruction, they were told that there was no evidence legally sufficient to show that defendant had divested herself of all estate and interest in and control over the land.—*Hartman v. Thompson*, 104 Md. 389, 65 Atl. 117. [Cited and annotated in 52 L. R. A. (N. S.) 988, 989, on liability of lessee, sublessee, or assignee for rent accruing after assignment or sublease.]

(b) Where the assignee of a leasehold when sued for rent set up that she had assigned her interest to a third person, the burden of proof was on her to show such fact.—*Hart-*

*man v. Thompson*, 104 Md. 389, 65 Atl. 117. [Cited and annotated, see supra.]

(c) In an action for rent against the assignee of the term, *held*, under the evidence, that it was a question for the jury whether defendant had divested herself of all estate and interest in the land.—*Hartman v. Thompson*, 104 Md. 389, 65 Atl. 117. [Cited and annotated, see supra.]

(d) Rent due under a 99-year lease renewable forever, may be recovered in either debt or covenant by the assignee of a reversion, who may combine in an action against the lessee, a claim for rent accrued after the assignment and rent accrued prior to the assignment and specifically assigned to him.—*Outtoun v. Dulin*, 72 Md. 536, 20 Atl. 134. [Cited and annotated in 31 L. R. A. (N. S.) 127, on alteration of instruments: change in designation of party; in 52 L. R. A. (N. S.) 766, on estoppel to deny lessor's title as affected by fact that lessee did not recognize lessor's title to the particular property; in 52 L. R. A. (N. S.) 979, on liability of lessee, sublessee, or assignee for rent accruing after assignment or sublease.]

(e) Where ground rent has been apportioned, action in covenant may be brought for the whole rent, and recovery had for the part to which plaintiff is entitled.—*Worthington v. Cooke*, 56 Md. 51.

(f) A lease for the term of 99 years, renewable forever, is within act 1872, c. 346, § 2, re-enacting St. 4 Geo. II, c. 28, relating to actions of ejectment by landlords on the nonpayment of rent.—*Campbell v. Shipley*, 41 Md. 81. (See Code, art. 75, § 73; Alex. Brit. Stat. [Coe's ed.] 950.) [Cited and annotated in 53 L. R. A. 946, 950, 951, 952, on tenant's right to acquire title not inconsistent with landlord's when tenancy commenced.]

(g) A suit at law cannot be maintained against the assignee of a lessee, after an assignment of the term by him, for breaches of a covenant which took place while he still held the leasehold interest, the remedy in such cases being in equity alone.—*Hintze v. Thomas*, 7 Md. 346. (See *Donelson v. Polk*, 64 Md. 501, 2 Atl. 824; *Commercial Bldg. & Loan Ass'n v. Robinson*, 90 Md. 615, 45 Atl. 449.) [Cited and annotated in 14 L. R. A. 153, 155, on liability of assignee of leasehold for rent; in 52 L. R. A. (N. S.) 990, on

liability of lessee, sublessee, or assignee for rent accruing after assignment or sublease.]

(h) Where a lessee enters and pays rent for a number of years, and then remains in possession, but refuses to pay rent because of defects in the execution of the lease, the rent may be collected in equity.—*Williams' Ex'rs v. City of Annapolis*, 6 H. & J. 529.

### § 13. Lien.

### § 14. Distress.

*Cross-Reference.*

See ante, §§ 9, 12.

### § 15. Re-entry and recovery of possession of property.

(a) A lease giving the right of re-entry if the rent be in arrear for one year, "the same

being first lawfully demanded," confers a right to re-enter which will support ejectment without previous demand for the rent.—*Campbell v. Shipley*, 41 Md. 81. [Cited and annotated, see supra, § 12.]

### GROUSE.\*

*Cross-Reference.*

As game, see "Game."

### GROWING CROPS.\*

*Cross-References.*

See "Crops"; "Damages," § 112.

### GUARANTEED STOCK.\*

*Cross-Reference.*

See "Corporations," §§ 82, 120.

## GUARANTY.\*

### Scope-Note.

[INCLUDES collateral promises to answer for the payment of a debt or performance of a duty or contract or other obligation by another, liable therefor in the first instance, in the event of his failure to pay or perform the same; nature, requisites, validity, incidents, construction, operation, and effect of such promises in general; and rights, liabilities, and remedies of guarantors, principal debtors, and creditors.

[EXCLUDES contracts of suretyship (see "*Principal and Surety*"), and of indemnity (see "*Indemnity*"); guaranties by particular classes of persons (see "*Infants*"; "*Insane Persons*"; and other specific heads), partners (see "*Partnership*"), and corporations (see "*Corporations*"); and requirements of statute of frauds (see "*Frauds, Statute of*").

[For complete list of matters excluded, see cross-references, post.]

### Analysis.

#### I. Requisites and Validity.

- § 1. Nature of obligation.
- § 2. What law governs.
- § 3. Express and implied guaranties.
- § 4. Guaranty distinguished from other contracts.
- § 5. Validity of obligation of principal.
- § 6. Offer and acceptance in general.
- § 7. Notice of acceptance.
- § 8. Written guaranties
- § 9. — Form and contents.
- § 10. — Execution in general.
- § 11. — Conditional signature.
- § 12. — Delivery.
- § 13. Consideration.

\*Annotation: Words and Phrases, same title.

**I. Requisites and Validity.**—Continued.

- § 14. — Necessity.
- § 15. — Effect of seal.
- § 16. — Sufficiency.
- § 17. — Failure of consideration.
- § 18. Validity of assent in general.
- § 19. Mistake.
- § 20. Fraud, duress, and undue influence.
- § 21. Estoppel or waiver as to defects or objections.
- § 22. Ratification.
- § 23. Modification.
- § 24. Revocation.
- § 25. Evidence.
- § 26. Questions for jury.

**II. Construction and Operation.**

- § 27. General rules of construction.
- § 28. What law governs.
- § 29. Parties.
- § 30. — In general.
- § 31. — Joint or several.
- § 32. Negotiability and transfer of guaranty.
- § 33. Nature of liability.
- § 34. — In general.
- § 35. — Guaranty of negotiable instruments.
- § 36. Scope and extent of liability.
- § 37. Commencement and duration in general.
- § 38. Continuing guaranty.
- § 39. Notice to guarantor of transactions under guaranty.
- § 40. Limitation as to amount.
- § 41. Interest.
- § 42. Conditions.
- § 43. Performance of contract or conditions by creditor.
- § 44. Default of principal.
- § 45. Demand on principal.
- § 46. Notice of default to guarantor.
- § 47. Time of accrual of liability.

**III. Discharge of Guarantor.**

- § 48. Provisions of contract of guaranty in general.
- § 49. Subsequent release or agreement.
- § 50. Operation of law in general.
- § 51. Death of principal.
- § 52. Death of guarantor.
- § 53. Change in obligation or duty of principal.
- § 54. Alteration of instrument.
- § 55. Extension of time for payment or other performance.
- § 56. — In general.
- § 57. — Consideration.
- § 58. Payment or other satisfaction by principal.

**III. Discharge of Guarantor.—Continued.**

- § 59. — In general.
- § 60. — Application of payments.
- § 60½. Misapplication of funds or securities.
- § 61. Taking additional security.
- § 62. Release or loss of other securities.
- § 63. Release of co-guarantor.
- §§ 64, 65. Discharge of principal without payment or satisfaction.
- § 66. Negligence of creditor in general.
- § 67. Neglect to give notice of default to guarantor.
- § 68. Premature action on original obligation.
- § 69. Neglect to act or proceed against principal.
- § 70. — In general.
- § 71. — After request of guarantor.
- § 72. Waiver or estoppel of guarantor.
- § 73. New promise after discharge.
- § 74. Payment or other satisfaction by guarantor.

**IV. Remedies of Creditors.**

- § 75. Nature and form.
- § 76. Rights of action.
- § 77. Conditions precedent.
- § 78. Defenses.
- § 79. Conclusiveness of former adjudication against principal.
- § 79½. Recourse to indemnity to guarantor from principal.
- § 80. Jurisdiction and venue.
- § 81. Time to sue and limitations.
- § 82. Parties.
- § 83. Pleading.
- § 84. — Mode and form in general.
- § 85. Declaration, complaint, or petition.
- § 86. — Plea or answer and subsequent pleadings.
- § 87. — Issues, proof, and variance.
- § 88. Evidence.
- § 89. — Presumptions and burden of proof.
- § 90. — Admissibility.
- § 91. — Weight and sufficiency.
- § 92. Trial.
- § 93. New trial.
- § 94. Judgment.
- § 95. Execution.
- § 96. Appeal and error.

**V. Rights and Remedies of Guarantor.**

- § 97. As to creditor.
- § 98. As to principal.
- § 99. — In general.
- § 100. — Indemnity or reimbursement.
- § 101. — Enforcement against principal of judgment against guarantor.

**V.. Rights and Remedies of Guarantor—Continued.**

- § 102. — Actions against principal.
- § 103. As to co-guarantor.
- § 104. — In general.
- § 105. — Contribution.
- § 106. — Actions between guarantors.
- § 107. As to third persons.

*Cross-References.*

See "Indemnity"; "Principal and Surety."  
 Acceptance of check as contract of guaranty, see "Bills and Notes," § 74.  
 Application of statute of frauds, see "Frauds, Statute of," §§ 13-36.  
 Applying deposit to liability as guarantor, see "Banks and Banking," § 134.  
 Assignment of guaranty of payment, see "Assignments," § 18.  
 Assignment of offer of guaranty, see "Assignments," § 19.  
 Authority of agent as to guaranty, see "Principal and Agent," § 110.  
 Authority of agent to release guarantor, see "Principal and Agent," § 111.  
 Authority of officers and agents of corporations, see "Corporations," § 416.  
 By banks in general, see "Banks and Banking," § 99.  
 By corporations in general, see "Corporations," § 484.  
 By factor, see "Factors," § 30.  
 By married woman, see "Husband and Wife," §§ 87, 158, 159.  
 By national banks, see "Banks and Banking," § 260.  
 By railroad company, see "Railroads," § 154.  
 Capacity of banks, to guaranty, see "Banks and Banking," § 99.  
 Capacity of corporations to guaranty in general, see "Corporations," § 484.  
 Discharge of guarantor by tender of payment, see "Tender," § 14.  
 Discharge of guarantor of rents, see "Landlord and Tenant," § 207.  
 Discharge of principal in bankruptcy as discharging guarantor, see "Bankruptcy," § 430.  
 Estoppel of school trustees to plead non-liability on personal guaranty of debt created in excess of constitutional limit, see "Schools and School Districts," § 90.  
 Execution of guaranty on Sunday, see "Sunday," §§ 11, 13.  
 Guaranty fund of company, see "Insurance," §§ 40, 60.  
 Guaranty insurance, see "Insurance," §§ 285, 332, 430-437, 509-514.  
 Indorsement of bill or note with guaranty, see "Bills and Notes," § 295.  
 Indorsement of guaranty by payee of note as passing title, see "Bills and Notes," § 198.  
 Liabilities of parties to bills or notes as principals or guarantors, see "Bills and Notes," § 121.

Liability of indorser of bill or note as guarantor, see "Bills and Notes," § 246.  
 Liability of school officers as guarantors of school orders, see "Schools and School Districts," § 95.  
 Liability on guaranty as claim against bankrupt's estate, see "Bankruptcy," § 316.  
 Of dividends on stock subscribed in public aid of railroad, see "Railroads," § 37.  
 Of dividends to induce subscriptions to stock, see "Corporations," § 77.  
 Of work by contractor for public improvements, see "Municipal Corporations," § 368.  
 Parol or extrinsic evidence of prior or contemporaneous agreement, see "Evidence," §§ 441, 442, 444.  
 Parol or extrinsic evidence, to contradict or vary contract of guaranty, see "Evidence," §§ 404, 418, 419, 423.  
 Parol or extrinsic evidence to construe contract, see "Evidence," § 450.  
 Power of city to make contract of guaranty, see "Municipal Corporations," § 227.  
 Power of partner to bind firm, see "Partnership," § 147.  
 Preference of claim against corporation guaranteed by corporate officers, see "Corporations," § 545.  
 Recovery by guarantor of payments obtained by fraud, see "Payment," § 86.  
 Recovery of money paid on guaranty under mistake of law, see "Payment," § 84.  
 Right of guarantors to prove claims in bankruptcy, see "Bankruptcy," § 311.  
 Stipulations affecting validity of contract for public improvements, see "Municipal Corporations," § 339.  
 Subrogation of guarantor, see "Subrogation," §§ 6-9.  
 Suretyship distinguished from guaranty, see "Principal and Surety," § 6.  
 Tender of payment by guarantor, see "Tender," § 14.

*Limitations.*

Accrual of right of action, see "Limitation of Actions," § 46.  
 Effect of bar of debt, see "Limitation of Actions," § 167.  
 Limitations, in general, see "Limitation of Actions," §§ 22, 24.  
 Payment as tolling limitations, see "Limitation of Actions," § 155.

## I. REQUISITES AND VALIDITY.

### § 1. Nature of obligation.

### § 2. What law governs.

(a) The contract of guaranty to the lender of the payment of a loan is made in the state where the last act to make it a binding obligation, the making of the loan, is done.—*Union Trust Co. v. Knabe*, 122 Md. 584, 89 Atl. 1106, 1116; *Same v. Schlens*, Id.

### § 3. Express and implied guaranties.

#### Annotation.

Request to make advances to another as implied guaranty of payment.—46 L. R. A. (N. S.) 484, note.

(a) The reply of brokers to inquiries of a purchaser of goods concerning the responsibility of the seller, that "we would say that the contract is good, and that we will look after the same both to your interest and for our own," does not constitute a guaranty that the contract of sale will be carried out.—*Kenneweg Co. v. Finney & Robinson*, 98 Md. 114, 56 Atl. 482.

(b) Plaintiff sold goods to F. as agent for defendant, taking his note for the price. Defendant wrote plaintiff on what terms he would guarantee the note, and, if the terms were accepted, for what amount defendant might draw on him, to which plaintiff replied that defendant might draw on him for the amount of F.'s note, but said nothing about guaranteeing the note. Defendant drew accordingly, and plaintiff paid the draft. Held, in an action to recover the amount so paid, that plaintiff was guarantor of the note, and F. being insolvent, could not recover.—*Ferris v. Walsh*, 5 H. & J. 306.

### § 4. Guaranty distinguished from other contracts.

#### Cross-References.

Acceptance of check as contract of guaranty, see "Bills and Notes," § 74.

Suretyship distinguished from guaranty, see "Principal and Surety," § 6.

(a) Where a bank, at the instance of a trust company, purchased shares of the latter's stock, never debiting the trust company on the bank books, taking for the amounts thus expended the notes of employees of the trust company, guaranteed by the company, it was not primarily liable for the money used in purchasing the stock, but

was liable only as a guarantor.—*Maryland Trust Co. v. National Mechanics Bank*, 102 Md. 608, 63 Atl. 70; *Solter v. Same*, Id.

(b) In a suit by a physician for services rendered to a man injured by an accident upon the railroad of the defendant corporation, where the original attendance was antecedent to any request of the defendant for his services, an instruction to the jury which holds the defendant liable for services rendered at their request or instance is erroneous, if it does not also leave it to the jury to find whether the credit was given originally to them, or whether their liability was collateral only.—*Northern Cent. R. Co. v. Prentiss*, 11 Md. 119.

### § 5. Validity of obligation of principal.

(a) The demand and receipt by a bank of usurious interest from indorsers upon notes discounted by it, the payment of which notes is guaranteed to the bank, does not avoid the guaranty.—*Lazear v. National Union Bank*, 52 Md. 78, 36 Am. Rep. 355. [Cited and annotated in 16 L. R. A. 224, on bank's purchase of notes and bills as distinguished from discounting; in 56 L. R. A. 679, 698, 705, on effect of national bank's taking or reserving illegal interest; in 39 L. R. A. (N. S.) 740, as to when a guaranty is continuing.]

(b) A guarantor is not discharged because the contract of the principal is void from her coverture.—*Nabb v. Koontz*, 17 Md. 283. [Cited and annotated in 20 L. R. A. (N. S.) 1000, on effect upon liability of surety of principal's incapacity to contract.]

### § 6. Offer and acceptance in general.

#### Cross-Reference.

Pleading acceptance, see post, § 85.

### § 7. Notice of acceptance.

#### Cross-References.

Notice of transaction under guaranty, see post, § 39.

Pleading notice, see post, § 85.

#### Annotation.

Necessity of notice of acceptance to bind guarantor.—16 L. R. A. (N. S.) 353; 33 L. R. A. (N. S.) 960; 48 L. R. A. (N. S.) 198, notes.

(a) Notice of acceptance of an absolute guaranty is unnecessary.—*Booth v. Irving Nat. Exch. Bank*, 116 Md. 668, 82 Atl. 652. [Cited and annotated in 48 L. R. A. (N. S.) 198, on necessity of notice of acceptance to bind guarantor.]

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

(b) Where a guaranty is absolute, for the payment of the debt if the debtor does not pay, no notice of acceptance is necessary.—*Mitchell v. McCleary*, 42 Md. 374. [Cited and annotated in 16 L. R. A. (N. S.) 358, 362, on necessity for notice of acceptance to bind guarantor.]

(c) Where, before writing the letter of guaranty, the guarantor is informed by his principal that the guarantee has expressed a willingness to make him a loan on the guarantor's security, no notice of acceptance is necessary, though the letter expresses merely a willingness to become the eventual security for the payment of the loan.—*Caton v. Shaw*, 2 H. & G. 13. [Cited and annotated in 16 L. R. A. (N. S.) 362, 372, on necessity for notice of acceptance to bind guarantor.]

### §§ 8-12. Written guaranties.

#### Cross-References.

Guaranty executed on Sunday, see "Sunday," § 11.

Guaranty signed or dated on Sunday, but delivered on secular day, see "Sunday," § 13.

(a) A guaranty of the payment of a note need not show upon its face the consideration for which it was given.—*Little v. Edwards*, 69 Md. 499, 16 Atl. 134.

(b) Where, in a written guaranty, a note is described as indorsed by certain persons, instead of signed by them, the description is fatally defective, and no suit at law can be maintained on such guaranty. The only remedy, in case of an actual mistake, is to have the instrument reformed by a court of equity.—*Ordeman v. Lawson*, 49 Md. 135. [Cited and annotated in 28 L. R. A. (N. S.) 876, 877, on relief from mistake of law as to effect of instrument.]

(c) The obligation of one signing and sealing a guaranty, which it was intended should be signed by him alone, is not impaired by the fact that the guaranty concludes, "In witness whereof we have hereunto set our hands and affixed our seals."—*Mitchell v. McCleary*, 42 Md. 374. [Cited and annotated, see *supra*, § 7.]

(d) A contract of guaranty is sufficient, so that an action may be maintained thereon, though no consideration directly between the persons giving and receiving the guaranty be expressed on its face, if it appears that the party for whom the guarantor becomes

a surety receives a benefit, or the party to whom the guaranty is given suffers a loss.—*Hutton v. Padgett*, 26 Md. 228. [Cited and annotated in 16 L. R. A. (N. S.) 360, on necessity for notice of acceptance to bind guarantor.]

(e) A guaranty in the following terms: "I hereby guaranty the ultimate payment of the within note,"—is void for want of consideration.—*Aldridge v. Turner*, 1 G. & J. 427.

### §§ 13-17. Consideration.

(a) The consideration of a guaranty of repayment of a loan to be made on a note, the recited dollar not being paid, is the making of the loan.—*Union Trust Co. v. Knabe*, 122 Md. 584, 89 Atl. 1106, 1116; *Same v. Schlens*, Id.

(b) The consideration of the guaranty, indorsed on the note, of payment to the lender of the loan, when due, being the making of the loan evidenced by the note on its terms, the guaranty becomes binding only on the making of the loan.—*Union Trust Co. v. Knabe*, 122 Md. 584, 89 Atl. 1106, 1116; *Same v. Schlens*, Id.

(c) Where a guaranty was indorsed on the same paper, and referred expressly to the guaranteed contract, which showed the consideration to be the connection of an electric system with certain premises, the guaranty was a part of the original contract, made with the same understanding, even though the contract may have been signed prior in time to the guaranty.—*Klosterman v. United Electric & Power Co.*, 101 Md. 29, 60 Atl. 251.

(d) In an action on a guaranty, it appeared that defendants, in writing, guaranteed that M. would deliver 500 cases of tomatoes, according to his written contract with plaintiff. On the strength of the guaranty, plaintiff paid M. the price of the tomatoes. Held, that, if the original contract was founded on a good consideration, and at the time of the guaranty, and on the strength of it, plaintiff paid M. the price of the tomatoes, there was sufficient consideration to support the guaranty.—*Heyman v. Dooley*, 77 Md. 162, 26 Atl. 117, 20 L. R. A. 257. [Cited and annotated in 16 L. R. A. (N. S.) 353, on necessity for notice of acceptance to bind guarantor.]

(e) A promise to guaranty a debt already due, made in consideration of the forbearance of the creditor to attach the debtor's goods, is void where there was no valid ground of attachment.—*Smith v. Easton*, 54 Md. 138, 39 Am. Rep. 355. [Cited and annotated in 33 L. R. A. (N. S.) 177, on effect of extrinsic promise to sign or indorse note or bill.]

(f) A guaranty made at the time of the principal contract is binding on the guarantor, because it is founded on the consideration existing between the principal parties.—*Ordeman v. Lawson*, 49 Md. 135. [Cited and annotated, see supra, §§ 8-12.]

(g) Where a guaranty is given after the execution of the principal contract, a new consideration is necessary to support the guaranty.—*Roberts v. Woven Wire Mattress Co.*, 46 Md. 374. [Cited and annotated in 16 L. R. A. (N. S.) 359, 364, 367, on necessity for notice of acceptance to bind guarantor.]

(h) A guaranty expressly referring to a previous agreement between the principal and the guarantee, which was executory in its character and embraced prospective dealings between the parties, purports on its face a sufficient consideration.—*Roberts v. Woven Wire Mattress Co.*, 46 Md. 374. [Cited and annotated, see supra.]

(i) A promise to pay the debt of a third person, in consideration of the promisee's forbearance to proceed against such third person to have him adjudged a bankrupt, is without consideration, and an action is not maintainable thereon, if, at the time the promise was made, the promisee had no right under the bankrupt act to institute such proceedings.—*Ecker v. McAllister*, 45 Md. 290.

(j) The mere naked promise in writing to pay the existing debt of another, without any consideration therefor, is void.—*Aldridge v. Turner*, 1 G. & J. 427.

(k) An undertaking to answer for the debt of another, though in writing and signed by the defendant, is void, if no consideration move between the plaintiff and defendant, either of forbearance or otherwise.—*Elliott v. Giese*, 7 H. & J. 457.

§§ 18-23. (See Analysis.)

## § 24. Revocation.

### Cross-References.

Death of guarantor as discharging guaranty, see post, § 52.

Death of principal as discharging guarantor, see post, § 51.

Effect of death of stockholder on continuing guaranty by all the stockholders, see post, § 38.

## § 25. Evidence.

### Cross-Reference.

Evidence in general, see post, §§ 88-91.

(a) Creditors compromised their claims, and defendant guarantied the payment, provided the compromise was effected with all the creditors of the debtor, as against certain buildings. Held, that, evidence as to the existence of any judgments which were liens on the buildings was admissible, in an action on the guaranty, in determining whether the condition of the guaranty was complied with.—*Slingsluff v. Andrew Volk Builders' Supply Co.*, 89 Md. 557, 43 Atl. 759.

(b) That a payment was made to a creditor having several demands on the same debtor, with the debtor's money, through one who was the security of the debtor for one of the debts, is not a circumstance from which an inference could be raised that the debtor intended it should be applied to the debt on which such agent was the guarantee.—*Mitchell v. Dall*, 4 G. & J. 361.

## § 26. Questions for jury.

### Cross-Reference.

Questions for jury in general, see post, § 92.

(a) Where defendant wrote to plaintiff as follows: "Mr. S., who is building a number of houses on ground I leased him, tells me you have agreed to furnish him 100,000 brick at \$6.25 on the following terms: \* \* \* and you can furnish Mr. S. on these terms, and if he does not pay you I will,"—the guaranty not being clear as to whether it was an original or a collateral undertaking, its construction depended on the intent, which was a question for the jury, and it was error to assume in instructions that the guaranty was a collateral undertaking, and the guarantor entitled to notice of default in payment.—*Donnelly v. Newbold*, 94 Md. 220, 50 Atl. 513.



(b) Where a guaranty is given to a bank for all liabilities to said bank of certain parties then existing or which might thereafter arise, and dealings are had by the bank with such parties, which are within the terms of the guaranty, in an action on the guaranty, it is for the jury to determine whether the transactions were had on the faith of the guaranty.—*Lazear v. National Union Bank*, 52 Md. 78, 36 Am. Rep. 355. [Cited and annotated in 16 L. R. A. 224, on bank's purchase of notes and bills as distinguished from discounting; in 56 L. R. A. 679, 693, 705, on effect of national bank's taking or reserving illegal interest; in 39 L. R. A. (N. S.) 740, as to when a guaranty is continuing.]

(c) Whether, on the facts presented, there is a contract of guaranty, is a question of law.—*Ferris v. Walsh*, 5 H. & J. 306.

## II. CONSTRUCTION AND OPERATION.

### Cross-Reference.

Indorsement of guaranty by payee of note as passing title, see "Bills and Notes," § 198.

### § 27. General rules of construction.

(a) The contract of guaranty is to be construed according to the intent of the parties, without strict technical accuracy, but in furtherance of its spirit.—*Booth v. Irving Nat. Exch. Bank*, 116 Md. 668, 82 Atl. 652. [Cited and annotated in 48 L. R. A. (N. S.) 198, on necessity of notice of acceptance to bind guarantor.]

### § 28. What law governs.

### §§ 29-31. Parties.

(a) Where an accommodation indorser of a note has an interest in a judgment against the maker, and being held as an indorser borrows money to pay the note, uniting with his co-owner in an assignment of the judgment to the lender to secure him, the indorser having received his part of the judgment at a different time from his co-owner, and their interests being unequal, a guaranty signed by both, in the words, "I guaranty," is a several guaranty.—*Little v. Edwards*, 69 Md. 499, 16 Atl. 134.

(b) B. selected goods of A., who refused to deliver them until C. agreed to pay for them in case B. did not. Held, that, there was no joint liability of B. and C.—*Conolly v. Kettlewell*, 1 Gill 260. [Cited and annotated

in 15 L. R. A. (N. S.) 220, on oral contemporary promise to pay where benefit inures to another.]

### § 32. Negotiability and transfer of guaranty.

#### Cross-Reference.

Assignment of offer of guaranty, see "Assignments," § 19.

### §§ 33-35. Nature of liability.

#### Cross-Reference.

Liability of indorser of bill or note as guarantor, see "Bills and Notes," § 426.

(a) Where a guarantor, on being told by the principal that he could obtain a loan if the guarantor would be his security, wrote to the guarantee that he "would become the eventual security for the payment" of a loan to the principal, his undertaking is absolute.—*Caton v. Shaw*, 2 H. & G. 13. [Cited and annotated in 16 L. R. A. (N. S.) 362, 372, on necessity for notice of acceptance to bind guarantor.]

### § 36. Scope and extent of liability.

#### Cross-Reference.

What law governs as to rate of interest chargeable to guarantor, see "Interest," § 28.

#### Annotation.

Does liability of guarantor of payment of interest cease at maturity of the obligation.—21 L. R. A. (N. S.) 154, note.

(a) Where a guaranty was executed to enable N. to borrow money at a bank, it covered N.'s liability as indorser on a note for money loaned to a corporation of which N. was president.—*Booth v. Irving Nat. Exch. Bank*, 116 Md. 668, 82 Atl. 652. [Cited and annotated, see supra, § 27.]

(b) A guaranty held not to cover defaults occurring after the individual obligee had incorporated.—*W. B. Saunders Co. v. Ducker*, 116 Md. 474, 82 Atl. 154, Ann. Cas. 1913C, 817.

(c) An agreement held not to make a guarantor liable for defaults for which he was not liable under the guaranty agreement.—*W. B. Saunders Co. v. Ducker*, 116 Md. 474, 82 Atl. 154, Ann. Cas. 1913C, 817.

(d) Guarantor's liability will not be extended beyond the strict terms of his contract.—*W. B. Saunders Co. v. Ducker*, 116 Md. 474, 82 Atl. 154, Ann. Cas. 1913C, 817.

(e) A guaranty of "the payment of all bills payable by this contract" includes a balance of the total amount remaining unpaid.—*Klosterman v. United Electric & Power Co.*, 101 Md. 29, 60 Atl. 251.

(f) Each of the 12 directors of a distilling company agreed by a writing under seal to become individually responsible in the sum of \$2,500 to all dealers in hops and malt who should furnish these articles to the company's agent on the faith of the said obligation and within a year from its date. The obligation was dated December 22, 1873, and soon after its execution was placed in the hands of A., who furnished to the company's agent, prior to May 1, 1874, \$55,000 worth of malt. After May 1st, and within the year, B., on the faith of the obligation, as he claimed, though he had never actually seen the obligation, which still remained in A.'s hands, furnished malt to the amount of some \$5,000. A. brought suit on the guaranty against C., one of the directors, which was compromised for \$2,000. Subsequently B. brought a like suit against C. *Held*, that B., was entitled to recover \$500, and no more.—*Boyd v. Snyder*, 49 Md. 325. [Cited and annotated in 61 L. R. A. (N. S.) 357, on necessity for notice of acceptance to bind guarantor.]

### § 37. Commencement and duration in general.

### § 38. Continuing guaranty.

#### Annotation.

When is a guaranty a continuing one.—39 L. R. A. (N. S.) 724, note.

Liability, under continuing guaranty running to partnership or corporation, for goods sold or credits extended after a change in the firm or corporation.—14 L. R. A. (N. S.) 1231, note.

(a) A guaranty in the following terms: "I will guaranty their engagements, should you think it necessary, for any transactions they may have in your house,"—was held an absolute and continuing guaranty until countermanded.—*Grant v. Ridsdale*, 2 H. & J. 186. [Cited and annotated in 39 L. R. A. (N. S.) 730, as to when a guaranty is continuing.]

### § 39. Notice to guarantor of transactions under guaranty.

(a) Where the guaranty is absolute, no notice of the transactions had on the faith

of it is necessary.—*Caton v. Shaw*, 2 H. & G. 13. [Cited and annotated, see supra, §§ 33-35.]

### § 40. Limitation as to amount.

### § 41. Interest.

(a) Where the treasurer of a corporation, knowing that it was its uniform practice to charge up interest on all accounts every four months, and to treat accrued interest as principal, agreed "to pay on thirty days' notice any sum that may now or may hereafter be due \* \* \* said corporation, not exceeding in the aggregate \$35,000, for goods sold, and money loaned to H.," the guaranty included, in addition to the sum named, such sums as might be charged up as interest thereon under the practice of the corporation.—*Hooper v. Hooper*, 81 Md. 155, 31 Atl. 508. [Cited and annotated in 18 L. R. A. (N. S.) 586, as to when statute commences to run to bar action by surety against cosurety for contribution; in 37 L. R. A. (N. S.) 277, on payment or promise by principal as extending limitation period as to surety.]

### §§ 42-44. (See Analysis.)

### § 45. Demand on principal.

(a) Where a guaranty is absolute, the creditor need not demand payment from the principal, in order to fix the liability of a guarantor.—*Booth v. Irving Nat. Exch. Bank*, 116 Md. 668, 82 Atl. 652. [Cited and annotated, see supra, § 7.]

### § 46. Notice of default to guarantor.

#### Cross-Reference.

Failure to give notice as discharge of guarantor, see post, § 67.

#### Annotation.

Necessity of notice of default to bind guarantor.—20 L. R. A. 257, note.

(a) Where a guaranty is absolute, the creditor need not give notice of the principal's default in order to hold the guarantor.—*Booth v. Irving Nat. Exch. Bank*, 116 Md. 668, 82 Atl. 652. [Cited and annotated, see supra, § 7.]

(b) In an action on a guaranty, it appeared that defendants, in writing, guarantied that M. would deliver to plaintiff 500 cases of tomatoes, according to his written contract with him. On the strength of the guaranty, plaintiff paid M. the price of the

tomatoes. *Held*, that, there was no obligation on plaintiff to notify defendants of the default of M. in order to make defendants liable.—*Heyman v. Dooley*, 77 Md. 162, 26 Atl. 117, 20 L. R. A. 257. [Cited and annotated in 16 L. R. A. (N. S.) 353, on necessity for notice of acceptance to bind guarantor.]

#### § 47. Time of accrual of liability.

(a) Where a brewing company assigned a contract for the delivery of malt "as ordered during season ending December 31, 1907," and guaranteed delivery, there was no breach of the guaranty for which the company was liable until the malt was ordered, though the company previously notified plaintiff that they declined to guarantee deliveries.—*Mount Vernon Brewing Co. v. Teschner*, 108 Md. 158, 69 Atl. 702.

### III. DISCHARGE OF GUARANTOR.

#### Cross-References.

Authority of agent to release guarantors, see "Principal and Agent," § 111.

By discharge of principal in bankruptcy, see "Bankruptcy," § 430.

Guarantor of rent, see "Landlord and Tenant," § 207.

#### § 48. Provisions of contract of guaranty in general.

#### § 49. Subsequent release or agreement.

##### Annotation.

Release of principal after maturity of obligation as affecting guarantor.—38 L. R. A. (N. S.) 875, note.

#### § 50. Operation of law in general.

#### § 51. Death of principal.

#### § 52. Death of guarantor.

##### Cross-Reference.

Death of guarantor as revocation, see ante, § 24.

##### Annotation.

Is liability of guarantor or surety determined by his death.—2 B. R. C. 937, note.

#### § 53. Change in obligation or duty of principal.

(a) The agreement of one who has indorsed on a note an invalid contract of guaranty of repayment of the loan made on the note, in terms consenting to extension of time for payment of the note, and to "remain" bound as indorser of it, does not alter the contract of guaranty, or change liability on it, but

merely preserves any liability thereon.—*Union Trust Co. v. Knabe*, 122 Md. 584, 89 Atl. 1106, 1116; *Same v. Schlens*, Id.

(b) A guarantor of the fidelity of an agent, providing that the contract of agency may be modified by agreement in writing between the principals, is released from future liability by the extension of the agent's territory without any written agreement.—*Plunkett v. Davis Sewing Mach. Co.*, 84 Md. 529, 36 Atl. 115.

#### § 54. Alteration of instrument.

#### §§ 55-57. Extension of time for payment or other performance.

(a) Mere delay or promise to extend time, without consideration, is insufficient to discharge the guarantor.—*Booth v. Irving Nat. Exch. Bank*, 116 Md. 668, 82 Atl. 652. [Cited and annotated, see supra, § 7.]

(b) Plaintiffs, after extending for 30 days, with defendant's assent, the debt, payment of which he had guaranteed, wrote defendant at the end of the 30 days that the debtors wanted another extension of 30 days, and that plaintiffs had advised them that they would accept a one month's note for the account, so as not to discommode defendant, and to favor the debtors. Receiving no reply, plaintiffs accepted the debtors' note for 30 days. *Held*, that acceptance of the note, though without further consideration, extended the time of payment, and discharged defendant, his silence not amounting to acquiescence.—*American Iron & Steel Mfg. Co. v. Beall*, 101 Md. 423, 61 Atl. 629.

(c) It is a defense to an action at law against a guarantor that the creditor granted an extension to the principal debtor, although the contract is under seal, if it shows on its face that defendant is merely a guarantor.—*Dixon v. Spencer*, 59 Md. 246.

(d) An extension of the time of payment of a bond, granted by the holder to the principal obligor after the maturity of the bond, does not discharge a guarantor.—*Hayes v. Wells*, 34 Md. 512. [Cited and annotated in 52 L. R. A. (N. S.) 333, on consideration for agreement extending time of payment.]

(e) An extension of time of payment of a bond which will discharge a guarantor must be an actual agreement on a sufficient con-

sideration for a definite period, and must amount in law to an estoppel which will prevent a suit on the bond against the principal until the expiration of the period of extension.—*Hayes v. Wells*, 34 Md. 512. [Cited and annotated, see supra.]

§§ 58-62. (See Analysis.)

§ 63. Release of co-guarantor.

(a) Where a creditor accepts the payment of a sum less than that due from part of the guarantors, and agrees not to proceed against them for any further sum on account of the obligation, the agreement, not being under seal, and being based on no other consideration, is nudum pactum as to the balance due, and does not discharge the guarantors.—*Commercial & Farmers Nat. Bank v. McCormick*, 97 Md. 703, 55 Atl. 439. [Cited and annotated in 11 L. R. A. (N. S.) 1018, on part payment as consideration for discharge of undisputed debt.]

(b) A covenant not to sue some of several guarantors on their paying a sum less than that due from them does not release the others, since to have that effect there must be a technical release under seal.—*Commercial & Farmers Nat. Bank v. McCormick*, 97 Md. 703, 55 Atl. 439. [Cited and annotated, see supra.]

§§ 64,65. Discharge of principal without payment or satisfaction.

Annotation.

Release of principal after maturity of obligation as affecting guarantor.—38 L. R. A. (N. S.) 875, note.

§ 66. Negligence of creditor in general.

§ 67. Neglect to give notice of default to guarantor.

Cross-References.

Necessity of notice to fix liability, see ante, § 46.

Notice to lessee who guarantees payment of rent of default of assignee, see "Landlord and Tenant," § 220.

(a) Where a guaranty is conditional, and notice of the principal's default is required, failure to give it only releases the guarantor to the extent of his loss sustained thereby.—*Booth v. Irving Nat. Exch. Bank*, 116 Md. 668, 82 Atl. 652. [Cited and annotated, see supra, § 7.]

§ 68. Premature action on original principal.

§§ 69-71. Neglect to act or proceed against principal.

(a) Where, during the whole period covered by a guaranty, the principal was unable to pay the debt, the mere delay of the creditor in demanding payment of the principal will not discharge the guarantor.—*Hooper v. Hooper*, 81 Md. 155, 31 Atl. 508. [Cited and annotated in 18 L. R. A. (N. S.) 586, as to when statute commences to run to bar action by surety against cosurety for contribution; in 37 L. R. A. (N. S.) 277, on payment or promise by principal as extending limitation period as to surety.]

§§ 72-74. (See Analysis.)

#### IV. REMEDIES OF CREDITORS.

Cross-References.

See "Submission of Controversy," § 13.

Joinder of causes of action, see "Action," § 50.

Personal judgment for deficiency against guarantor on foreclosure of mortgage, see "Mortgages," § 559.

Right of assignee of bond to sue in his own name on guaranty of payment, see "Assignments," § 121.

Splitting cause of action, see "Action," § 53.

§ 75. Nature and form.

§ 76. Rights of action.

§ 77. Conditions precedent.

(a) Where one guaranties the payment of a note, and not merely its collectibility, he is liable when it is not paid at maturity, without a showing that the payee exhausted his remedies against the principal or that the principal was insolvent.—*Walter A. Wood Reaping & Mowing Mach. Co. v. Ascher*, 108 Md. 133, 62 Atl. 1023, 115 Am. St. Rep. 343.

(b) In an action on a guaranty, the inability of the party primarily liable to pay the debt must be shown, in order to warrant a judgment for plaintiff.—*Slingluff v. Andrew Volk Builders' Supply Co.*, 89 Md. 557, 48 Atl. 759.

§§ 78-82. (See Analysis.)

§ 83. Pleading.

Cross-Reference.

In action by assignee of guaranty, see "Assignments," § 131.

§ 84.— Mode and form in general.

§ 85.— Declaration, complaint, or petition.

Cross-Reference.

Necessity of pleading that guaranty was in writing, see "Frauds, Statute of," § 148.

(a) In an action by the lessor of certain premises against a guarantor on his guaranty in writing that the lessee of said premises should pay the rent and comply with all his obligations in the lease, the declaration averred that "the defendant did on the day of the execution of said lease and as part thereof, and prior to and as a condition precedent to the making of said lease and to the delivery of said property, guaranty in writing unto the said plaintiff in manner and form as follows," and then followed the guaranty in the very words. The declaration also repeatedly averred that the guaranty was part and parcel of the consideration for the lease, that the lease was made on the faith of it, and that the premises were delivered and the lessee took possession of them under and subject to said lease and guaranty. There was a general demurrer to the declaration. *Held*, that, the declaration was sufficient.—*Mitchell v. McCleary*, 42 Md. 374. [Cited and annotated in 16 L. R. A. (N. S.) 358, 362, on necessity for notice of acceptance to bind guarantor.]

(b) A declaration in an action on a guaranty must allege that the debt has not been paid by the principal debtor.—*Mitchell v. Dall*, 2 H. & G. 159.

#### § 86.—Plea or answer and subsequent pleadings.

(a) Where a declaration in an action against a guarantor sets up the breach relied on, a plea of general performance cannot be allowed, as issue cannot be taken on such plea.—*Commercial & Farmers Nat. Bank v. McCormick*, 97 Md. 703, 55 Atl. 439. [Cited and annotated in 11 L. R. A. (N. S.) 1018, on part payment as consideration for discharge of undisputed debt.]

#### § 87.—Issues, proof, and variance.

(a) In an action on a note and written guaranty, where the note and guaranty were filed with a declaration, it was immaterial that the declaration alleged that defendant "indorsed" the note sued on, while proofs showed that he "guaranteed" payment.—*Booth v. Irving Nat. Exch. Bank*, 116 Md. 668, 82 Atl. 652. [Cited and annotated in 48 L. R. A. (N. S.) 198, on necessity of notice of acceptance to bind guarantor.]

(b) In an action on the guaranty of payment of a judgment assigned and guaranteed by the owner, a plea of never indebted as alleged puts in issue the consideration for the assignment, as well as the promise to pay it, and a further plea denying the consideration is properly disallowed.—*Little v. Edwards*, 69 Md. 499, 16 Atl. 134.

#### § 88. Evidence.

##### Cross-Reference.

Evidence as to requisites and validity, see ante, § 25.

#### § 89.—Presumptions and burden of proof.

##### Cross-References.

Presumption as to guaranty under seal, see ante, § 15.

Presumption and burden of proof as to payment by note, see "Payment," § 67.

(a) That a payment was made to a creditor having several demands on the same debtor, with the debtor's money, through one who was the security of the debtor for one of the debts, is not a circumstance from which an inference could be raised that the debtor intended it should be applied to the debt on which such agent was the guarantor.—*Mitchell v. Dall*, 4 G. & J. 361.

#### § 90.—Admissibility.

(a) In an action against a brewing company for breach of a guaranty for the delivery of malt under a contract assigned by the company to plaintiff, plaintiff could ask the company's president how it happened that the malt was delivered to another company, where some of the stockholders in one company were stockholders in the other, and the company offered a prayer proceeding on the theory that it had notified plaintiff that it would be unable to carry out the terms of the assignment, while the president testified that he had notified the seller to disregard any demand from plaintiff.—*Mount Vernon Brewing Co. v. Teschner*, 108 Md. 158, 69 Atl. 702.

(b) In an action against a guarantor to recover a portion of the debt, a covenant not to sue other guarantors, executed on their paying a proportion of the debt less than that due, not being pleadable in bar, is not admissible in evidence.—*Commercial & Farmers Nat. Bank v. McCormick*, 97 Md.

703, 55 Atl. 439. [Cited and annotated in 11 L. R. A. (N. S.) 1018, on part payment as consideration for discharge of undisputed debt.]

### § 91.—Weight and sufficiency.

(a) Evidence, in an action against a brewing company for breach of a guaranty of the delivery of malt under a contract assigned to plaintiff by the company, held sufficient to show the market value of the malt at the place of delivery.—*Mount Vernon Brewing Co. v. Teschner*, 108 Md. 158, 69 Atl. 702.

### § 92. Trial.

#### Cross-Reference.

Preparation and formulation of verdict, see "Trial," § 320.

(a) In an action to recover on a guaranty of payment of the contract price for furnishing electricity, evidence examined, and whether the contract had been signed and accepted by the plaintiff at the time defendant signed as guarantor, held, a question for the jury.—*Klosterman v. United Electric & Power Co.*, 101 Md. 29, 60 Atl. 251.

(b) Where a guaranty is given to a bank for all liabilities to said bank of certain parties then existing or which might thereafter arise, and dealings are had by the bank with such parties, which are within the terms of the guaranty, in an action on the guaranty, it is for the jury to determine whether the transactions were had on the faith of the guaranty.—*Lazear v. National Union Bank*, 52 Md. 78, 36 Am. Rep. 355. [Cited and annotated in 16 L. R. A. 224, on bank's purchase of notes and bills as distinguished from discounting; in 56 L. R. A. 679, 693, 705, on effect of national bank's taking or reserving illegal interest; in 39 L. R. A. (N. S.) 740, as to when a guaranty is continuing.]

(c) Whether, on the facts presented, there is a contract of guaranty, is a question of law.—*Ferris v. Walsh*, 5 H. & J. 306.

§§ 93-96. (See Analysis.)

## V. RIGHTS AND REMEDIES OF GUARANTOR.

#### Cross-References.

Recovery of payments obtained by fraud, see "Payment," § 86.

Subrogation of guarantors, see "Subrogation," §§ 6-9.

§§ 97-102. (See Analysis.)

§§ 103-106. As to co-guarantor.

(a) Where the guarantee credits two of three guarantors in an amount exceeding the sum due under guaranty, and by direction of guarantors they are charged and their principal is credited with amounts sufficient to pay the sum due under the guaranty, an action against the other guarantor for contribution will lie.—*Hooper v. Hooper*, 81 Md. 155, 31 Atl. 508, 48 Am. St. Rep. 496. [Cited and annotated in 18 L. R. A. (N. S.) 586, as to when statute commences to run to bar action by surety against cosurety for contribution; in 37 L. R. A. (N. S.) 277, on payment or promise by principal as extending limitation period as to surety.]

§ 107. As to third persons.

## GUARANTY INSURANCE.\*

#### Cross-Reference.

See "Insurance," §§ 285, 332, 430-437, 509-514.

## GUARDIAN AD LITEM.\*

#### Cross-References.

Compensation as item of costs, see "Costs," § 177.

In action by or against infant, see "Infants," §§ 77-87.

In action by or against insane person, see "Insane Persons," § 94.

In proceeding to sell property of ward, see "Guardian and Ward," § 84.

## GUARDIAN AND WARD.\*

#### Scope-Note.

[INCLUDES general guardianship, particularly of the persons and estates of infants, by nature or under parental or judicial appointment; rights, powers, duties, and liabilities of guardians in respect of the persons and property of their wards; and legal proceedings relating thereto.

[EXCLUDES guardianship of insane or otherwise incompetent persons (see "Insane Persons"; "Drunkards"; "Spendthrifts"); guardians ad litem and special guardians (see "Infants"; "Insane Persons"; and other specific heads); and matters relating to infants and their property irrespective of guardianship (see "Infants").

[For complete list of matters excluded, see cross-references, post.]

\*Annotation: Words and Phrases, same title.

*Analysis.***I. Guardianship in General.**

- § 1. The relation in general.
- § 2. Power to control guardianship.
- § 3. What law governs.
- § 4. Guardians by nature.
- § 5. Guardians in socage.
- § 6. Volunteer and de facto guardians.
- § 7. Estoppel to deny guardianship.

**II. Appointment, Qualification, and Tenure of Guardian.**

- § 8. Jurisdiction of courts.
- § 9. Family meetings.
- § 9½. Persons for whom guardians may be appointed.
- § 10. Persons who may be appointed.
- § 11. Appointment by deed or will.
- § 12. Appointment of undertutor.
- § 13. Proceedings for judicial appointment.
- § 14. Acceptance and oath of office.
- § 15. Bond.
- § 16. Issuance of letters.
- § 17. Operation and effect of appointment.
- § 18. Revocation of appointment.
- § 19. Election of new guardian by ward.
- § 20. Majority of ward.
- § 21. Marriage of ward.
- § 22. Death of ward.
- § 23. Resignation and discharge.
- § 24. Disqualification.
- § 25. Removal.
- § 26. Death of guardian.
- § 27. Appointment of successor.

**III. Custody and Care of Ward's Person and Estate.**

- § 28. Representation of ward by guardian.
- § 29. Custody and control of person.
- § 30. Support and education.
- § 31. Services and earnings.
- § 32. Appraisal and inventory of estate.
- § 33. Collection of assets.
- § 34. Title to property in general.
- § 35. Possession and use of property.
- § 36. Management of estate.
- § 37. — In general.
- § 38. — Real property and interests therein.
- § 39. — Personal property.
- § 40. Sale.
- § 41. — In general.
- § 42. — Real property.
- § 43. — Personal property.

**III. Custody and Care of Ward's Person and Estate.—Continued.**

- § 44. Lease.
- § 45. Mortgage or pledge.
- § 46. Indorsement and transfer of bills and notes.
- § 47. Contracts.
- § 48. — In general.
- § 49. — Services.
- § 50. — Borrowing money.
- § 51. — Bills and notes.
- § 52. — Guaranty or suretyship.
- § 53. Investments.
- § 54. Interest on funds of estate.
- § 55. Deposits.
- § 56. Loans.
- § 57. Gifts.
- § 58. Expenditures.
- § 59. Submission to arbitration.
- § 60. Confession of judgment.
- § 61. Estoppel.
- § 62. Individual interest in transactions.
- § 63. Fraud.
- § 64. Waste, conversion, or embezzlement by guardian.
- § 65. Loss of property.
- § 66. Torts.
- § 67. Presentation and payment of claims.
- § 68. Reimbursement and indemnity to guardian.
- § 69. Conveyances, contracts, and other transactions between guardian and ward.
- § 70. Ratification of unauthorized acts.
- § 71. Joint guardianship.
- § 72. Successive guardianships.
- § 73. Representatives of deceased guardians.
- § 74. Mortgage or lien of ward on property of tutor.

**IV. Sales and Conveyances Under Order of Court.**

- § 75. Nature of remedy.
- § 76. Statutory provisions.
- § 77. Purposes for which authorized.
- § 78. Persons entitled to apply.
- § 79. Property or interests subject to disposal.
- § 80. Form of proceeding.
- § 81. Jurisdiction.
- § 82. Time for application.
- § 83. Parties.
- § 84. Guardians ad litem or special guardians.
- § 85. Termination of guardianship pending proceedings.
- § 86. Petition or other application.
- § 87. Citation or notice.
- § 88. Hearing of application in general.
- § 89. Determination as to necessity for sale, mortgage, or lease.



**IV. Sales and Conveyances Under Order of Court—Continued.**

- § 90. Order or decree.
- § 91. Oath.
- § 92. Special bond for sale.
- § 93. Appraisal of property to be sold.
- § 94. Sale.
- § 95. — Authority and powers in making in general.
- § 96. — Notice.
- § 97. — Manner and conduct.
- § 98. — Terms and conditions.
- § 99. — Persons who may purchase.
- § 100. — Requisites and validity in general.
- § 101. — Failure of bidder to complete purchase, and resale thereon.
- § 102. — Report or return.
- § 103. — Confirmation.
- § 104. — Ratification and curing defects.
- § 105. — Opening, vacating, or setting aside, and resale thereon.
- § 106. — Operation and effect.
- § 107. — Collateral attack.
- § 108. Rights and liabilities of purchasers.
- § 109. Liabilities of guardians.
- § 110. Liabilities on bonds for sale.
- § 111. Deed to purchaser.
- § 112. Mortgage.
- § 113. Lease.
- § 114. Proceeds.
- § 115. Ratification of unauthorized act.

**V. Actions.**

- § 116. Capacity of guardian to sue and be sued in general.
- § 117. Rights of action between guardian and ward.
- § 118. Rights of action by guardian or ward or both.
- § 119. Rights of action against guardian or ward or both.
- § 120. Defenses against guardian or ward.
- § 121. Defenses by guardian or ward.
- § 122. Set-off and counterclaim.
- § 123. Jurisdiction.
- § 124. Venue.
- § 125. Time to sue and limitations.
- § 126. Parties.
- § 127. Joinder or intervention of guardian in actions by others.
- § 128. Termination of guardianship pending action.
- § 129. Process and appearance.
- § 130. Pleading.
- § 131. Evidence.
- § 132. Trial.
- § 133. Judgment.
- § 134. Execution and enforcement of judgment.
- § 135. Appeal and error.
- § 136. Costs.

**VI. Accounting and Settlement.**

- § 137. Duty to account in general.
- § 138. Who entitled to require accounting.
- § 139. Who liable.
- § 140. Property subject to charge.
- § 141. Property to be included.
- § 142. Release from liability.
- § 143. Nature and form of proceeding for accounting.
- § 144. Jurisdiction of courts.
- § 145. Proceedings for accounting.
- § 146. Actions for accounting.
- § 147. Charges.
- § 148. Credits.
- § 149. Compensation.
- § 150. — In general.
- § 151. — Commissions.
- § 152. — Extra allowances.
- § 153. Form and requisites of account.
- § 154. Vouchers and proof of payment.
- § 155. Objections and exceptions.
- § 156. Examination of guardian.
- § 157. Evidence.
- § 158. Hearing or reference.
- § 159. Order or decree.
- § 160. Opening or vacating.
- § 161. Review.
- § 162. Costs and expenses.
- § 163. Operation and effect.
- § 164. Private accounting and settlement.
- § 165. Actions to open or set aside settlement.

**VII. Foreign and Ancillary Guardianship.**

- § 166. Foreign appointment.
- § 167. Ancillary appointment.
- § 168. Custody and disposition of property.
- § 169. Sales and conveyances under order of court.
- § 170. Actions by foreign guardians.
- § 171. Actions against foreign guardians.
- § 172. Accounting and settlement.

**VIII. Liabilities on Guardianship Bonds.**

- § 173. Nature and extent in general.
- § 174. Property covered.
- § 175. Functions and acts covered.
- § 176. Settlement and discharge of principal.
- § 177. Discharge of sureties.
- § 178. Breach or fulfillment of condition.
- § 179. Necessity of accounting and default by principal.
- § 180. Conclusiveness of adjudication against principal.
- § 181. Summary remedies.
- § 182. Actions.

*Cross-References.*

- See "Infants"; "Insane Persons"; "Parent and Child"; "Spendthrifts."
- Act authorizing appointment of guardians without notice to parents as denial of due process of law, see "Constitutional Law," § 309.
- Act declaring that the word "trustee" used in a former act shall apply to a guardian as encroachment on judiciary, see "Constitutional Law," § 53.
- Act providing that costs against infant plaintiff may be enforced by attachment against guardian as violating constitutional provisions prohibiting imprisonment for debt, see "Constitutional Law," § 83.
- Adverse possession of ward's land by guardian, see "Adverse Possession," § 61.
- Authority of guardian to consent to license for saloon on contiguous property, see "Intoxicating Liquors," § 66.
- Claim for necessities as obligation of deceased ward's estate, see "Executors and Administrators," § 202.
- Claims against guardian as enforceable against homestead, see "Homestead," § 90.
- Classification of claim of ward against estate of deceased guardian, see "Executors and Administrators," § 261.
- Committee of estate of convict, see "Convicts," § 3.
- Competency of parties or persons interested to testify against guardian as to transactions with person since deceased or incompetent, see "Witnesses," § 149.
- Conclusiveness, as against ward, of judgment against guardian, see "Judgment," § 692.
- Concurrent and conflicting jurisdiction of courts of different states, see "Courts," § 514.
- Consent of guardian to adoption of ward, see "Adoption," § 7.
- Consent of tatrix to settlement of account of executor, see "Executors and Administrators," § 508.
- Conversion by guardian as swindling, see "False Pretenses," § 2.
- Criminal responsibility of guardian for defilement of female ward, see "Seduction," § 35.
- Criminal responsibility of public guardian, see "Officers," § 122.
- Debt due from guardian to ward as preferred claim in bankruptcy, see "Bankruptcy," § 350.
- Declarations of guardian as evidence against ward, see "Evidence," § 251.
- Discharge of defaulting guardian from imprisonment under insolvent laws, see "Insolvency," § 151.
- Domicile of ward, see "Domicile," § 5.
- Embezzlement by guardian, see "Embezzlement," § 18.
- Equitable relief from judgment against guardian, see "Judgment," § 423.
- Exemption from requirement of security on appeal, see "Appeal and Error," § 374.
- Guardian ad litem, see "Infants," §§ 77-87; "Insane Persons," § 94.
- Guardianship of insane persons, see "Insane Persons," §§ 30-45.
- Guardianship of spendthrifts, see "Spendthrifts," § 6.
- Interest affecting competency to testify as to transactions with persons since deceased, see "Witnesses," § 140.
- Judgment against guardian by bank receiver as stopping running of limitations against ward, see "Banks and Banking," § 250.
- Jurisdiction of accounting conferred by consent, see "Courts," § 24.
- Jurisdiction of appeal in proceedings for accounting, see "Courts," § 227.
- Jurisdiction of district court for Indian Territory sitting as probate court, see "Courts," § 435.
- Jurisdiction of federal courts as affected by citizenship of guardian, see "Courts," § 311; "Removal of Causes," § 32.
- Jurisdiction of infant Indian, see "Indians," § 6.
- Jurisdiction of probate courts in general, over guardianship and estates of infants, see "Courts," § 199.
- Lapse of time raising presumption of payment by guardian to ward, see "Payment," § 66.
- Liability as owners of bank stock for debts of bank, see "Banks and Banking," §§ 248, 250.
- Liability of husband of female guardian for debts due ward from guardian before marriage, see "Husband and Wife," § 18.
- Liability of property to taxation, see "Taxation," § 83.
- Lien on land purchased by guardian with guardianship funds, see "Liens," § 7.
- Listing property for taxation, see "Taxation," § 331.
- Mandamus to compel accounting, see "Mandamus," § 4.
- Mandamus to compel entry in probate fee book of sheriff's fees in guardianship proceeding, see "Mandamus," § 15.
- Parol evidence of appointment of guardian, see "Evidence," § 178.
- Payment of ward's distributive share in estate of decedent, see "Executors and Administrators," § 304.
- Personal estoppel of guardian by deed, see "Estoppel," § 31.
- Place of taxation of ward's property, see "Taxation," § 270.
- Power of guardian to petition for probate of will, see "Wills," § 219.
- Prochein ami or next friend in suits between husband and wife, see "Husband and Wife," § 205.
- Removal of property to other state as depriving ward of property without due process of law, see "Constitutional Law," § 278.
- Right of guardian to appointment as administrator of estate of ward's parent, see "Executors and Administrators," § 17.

Right to damages arising from construction of municipal improvement, see "Municipal Corporations," § 398.  
 Right to jury trial on hearing of account, see "Jury," § 19.  
 Seduction of female ward by guardian, see "Seduction," § 6.  
 Special guardian to sell property of infant, see "Infants," § 39.

Subrogation of sureties of guardian, see "Subrogation," § 7.  
 Tender of payment to guardian on redemption from mortgage foreclosure, see "Mortgages," § 605.  
 Undue influence affecting validity of will, see "Wills," § 163.

## I. GUARDIANSHIP IN GENERAL.

### Cross-Reference.

Invalidity of amendatory act as affecting act amended relating to public guardians in certain townships, see "Statutes," § 143.

### § 1. The relation in general.

(a) The office of guardian is that of a trustee.—*Swan v. Dent*, 2 Md. Ch. 111.

### § 2. Power to control guardianship.

(a) The office of guardian is that of a trustee, and the general power of the chancery court to superintend trusts is expressly preserved by act 1798, c. 101.—*Swan v. Dent*, 2 Md. Ch. 111. (See Code, art. 93, §§ 144, et seq.)

### § 3. What law governs.

### § 4. Guardians by nature.

(a) If a mother, while she is sole, refuses to act as natural guardian, and upon her refusal a guardian is appointed, she may, after her marriage, and while she is covert, the guardian appointed having died, accept of and undertake such guardianship.—*Jarrett v. State*, 5 G. & J. 27.

### § 5. Guardians in socage.

### § 6. Volunteer and de facto guardians.

### Cross-Reference.

See post, § 139.

(a) Parties who take possession of the personal property of infants will be considered as guardians.—*Chaney v. Smallwood*, 1 Gill 367.

(b) The rule that a trespasser who enters upon an infant's real estate shall be charged as a guardian is a fiction of a court of equity only.—*Burch v. State*, 4 G. & J. 444.

### § 7. Estoppel to deny guardianship.

## II. APPOINTMENT, QUALIFICATION, AND TENURE OF GUARDIAN.

### Cross-References.

Ancillary appointment, see post, § 167.

Evidence of appointment, see post, § 131.

Foreign appointment, see post, § 166.

Act authorizing appointment without notice to parents as denial of due process of law, see "Constitutional Law," § 309.

Change of venue, see "Venue," § 36.

Judgment of appointment as conclusive of residence, see "Judgment," § 728.

Parol evidence of appointment, see "Evidence," § 178.

Review of appointment as dependent on finality of order, see "Appeal and Error," § 69.

Right to certiorari to review appointment as dependent on absence of remedy by appeal, see "Certiorari," § 5.

### § 8. Jurisdiction of courts.

### Cross-References.

Appointment of guardian for infant in attachment as transferring jurisdiction to probate, see "Courts," § 470.

Concurrent and conflicting jurisdiction of courts of different states, see "Courts," § 514.

Jurisdiction of probate courts in general over guardianship, see "Courts," § 199.

(a) Under Code, art. 93, § 144, relative to appointment of guardians, an infant's domicile and not his mere place of abode constitutes his "residence."—*Sudler v. Sudler*, 121 Md. 46, 88 Atl. 26.

(b) Under Code, art. 93, §§ 155, 186, the uncle of an infant who had not qualified as natural guardian by giving bond, *held*, not authorized to change her domicile so as to affect jurisdiction of Orphans' Court to appoint guardian, whether or not an uncle may become an infant's natural guardian.—*Sudler v. Sudler*, 121 Md. 46, 88 Atl. 26.

(c) Residence of infant, within Code, art. 93, § 144, relative to jurisdiction to appoint guardians, *held*, not changed by the infant leaving her former domicile, with the expectation and intention of making her home elsewhere.—*Sudler v. Sudler*, 121 Md. 46, 88 Atl. 26.

(d) Under the provisions of Code 1860, art. 93, § 10, defining the powers of the Orphans' Court where a legacy is given to an infant, but which he is not to receive unless he at-

tain full age, the court may appoint a guardian for him, require the guardian to give bond, and then direct the administrator to pay the money over to the guardian, to be by him kept and preserved, upon the responsibility of his bond, and paid to the ward, if he attain majority, and, if not, then to the parties entitled thereto under the will or by law.—*Gunther v. State*, 31 Md. 21. (See Code 1911, art. 93, § 10.)

(e) Act 1798, c. 101, subc. 12, § 2, which provides that the court shall have power to call before them any orphan for the purpose of appointing a guardian, contemplates only those cases where the infant has attained years of discretion and is within the reach of the process of the court.—*Lefever v. Lefever*, 6 Md. 472. (See Code, art. 93, § 147.)

(f) A father of minor children made application to the Court of Chancery to be appointed guardian to enable him to receive the rents and profits of land situated in the province of New Brunswick and belonging to such children. *Held*, that the court had jurisdiction to make such appointment, and that the father should be so appointed, with full authority to demand, sue for, collect, and receive all debts, demands, property, etc., of the said children lying or being without the jurisdiction of that state, and to make sale thereof and bring the proceeds to Maryland, to be there distributed.—*In re Corrie*, 2 Bland 488.

(g) The court of the county where letters of administration are granted have authority, by act of 1798, to appoint a guardian to the infant children of an intestate in all cases.—*Kraft v. Wickey*, 4 G. & J. 332, 23 Am. Dec. 569. (See Code, art. 93, §§ 144, et seq.)

(h) The Orphans' Court of the county where letters are granted has power, under act 1798, c. 101, subc. 12, to appoint a guardian for the infant children of an intestate.—*Kraft v. Wickey*, 4 G. & J. 332, 23 Am. Dec. 569. (See Code, art. 93, §§ 144, et seq.)

## § 9. Family meetings.

### § 9½. Persons for whom guardians may be appointed.

(a) The Orphans' Court has power to appoint a guardian for an infant whose father

or mother may be living at the time of the appointment, provided notice be given to such father or mother to show cause why the appointment should not be made.—*Redman v. Chance*, 32 Md. 42.

(b) The Court of Chancery may appoint a guardian of a female over 18 and under 21 years of age.—*Waring v. Waring*, 2 Bland 673.

## § 10. Persons who may be appointed.

### Annotation.

Right of parent to appointment as guardian of minor child.—33 L. R. A. (N. S.) 869, note.

Right of mother or reputed father to guardianship of illegitimate child.—65 L. R. A. 695, note.

(a) Code, art. 93, §§ 151, 152, relative to performance of duties of guardians by administrators, contemplate only the care of the infant's property temporarily, and do not intend that the administrator shall be a permanent guardian.—*Sudler v. Sudler*, 121 Md. 46, 88 Atl. 26.

(b) While in Maryland there is no statute prohibiting the appointment of an administrator as guardian of an infant interested in an estate, the fact that those seeking appointment as guardian are administrators of the infant's mother is no reason for appointing them as guardian, in view of the fact that the administrators would be required to settle with the guardians.—*Sudler v. Sudler*, 121 Md. 46, 88 Atl. 26.

(c) The appointment of the mother as guardian for her illegitimate child, in the place of a testamentary guardian appointed by the putative father, is the exercise of a discretionary power by the court, from which there is no appeal.—*Ramsay v. Thompson*, 71 Md. 315, 18 Atl. 592, 6 L. R. A. 705.

[Cited and annotated in 65 L. R. A. 690, 695, 696, on right of mother, or reputed father to custody or control of illegitimate; in 13 L. R. A. (N. S.) 294, on effect of father's attempt to appoint guardian for child against surviving mother; in 33 L. R. A. (N. S.) 870, on right of parent to appointment as guardian of minor.]

(d) Where a widow has neglected for three months to obey the mandate of the Orphans' Court "to appear before the court and qualify as guardian" to the minor heirs of her deceased husband, the court may prop-

erly presume that she has neglected or abandoned the trust, and the appointment of another guardian will be proper and legal.—*Lefever v. Lefever*, 6 Md. 472.

(e) In the appointment of a guardian, the interest of the minor is the paramount consideration.—*Compton v. Compton*, 2 Gill 241.

### § 11. Appointment by deed or will.

#### Annotation.

Effect of invalid attempt to appoint testamentary guardian.—45 L. R. A. (N. S.) 446, note.

Right of parent to appoint guardian for minor child by will.—2 L. R. A. (N. S.) 203, note.

(a) In the absence of statutory authority, the father of a natural child cannot appoint its testamentary guardian, nor can he delegate power to a third person to make such appointment; but the wishes of the father, as expressed in his will, may be considered by the court in making the appointment.—*Ramsay v. Thompson*, 71 Md. 315, 18 Atl. 592, 6 L. R. A. 705. [Cited and annotated, see supra, § 10.]

(b) A decree of divorce gave the custody of a daughter to the father, but allowed the mother the privilege of visiting her. Held, that the power granted to the father by St. 12 Car. II. c. 24, to appoint a testamentary guardian was not taken away by Code 1860, art. 16, § 26.—*Hill v. Hill*, 49 Md. 450, 33 Am. Rep. 271. (See Code 1911, art. 16, § 38; Alex. Brit. St. [Coe's ed.] 630.) [Cited and annotated in 13 L. R. A. (N. S.) 293, on effect of father's attempt to appoint guardian for child against surviving mother.]

### § 12. Appointment of undertutor.

### § 13. Proceedings for judicial appointment.

#### Cross-References.

Change of venue, see "Venue," § 36.

Judgment of appointment as conclusive of residence, see "Judgment," § 728.

Review of orders as dependent on finality, see "Appeal and Error," § 69.

Right to certiorari to review appointment as dependent on absence of remedy by appeal, see "Certiorari," § 5.

(a) No appeal lies from an order of the Orphans' Court appointing a guardian, when such court has jurisdiction to make the appointment.—*Sudler v. Sudler*, 121 Md. 46, 88 Atl. 26.

(b) No appeal will lie from the appointment of the mother of an illegitimate child as its guardian, in place of the testamentary guardian appointed by the putative father.—*Ramsay v. Thompson*, 71 Md. 315, 18 Atl. 592, 6 L. R. A. 705. [Cited and annotated, see supra, § 10.]

(c) Where the appointment of a guardian for a child whose father or mother is living is made without due notice to the father (or the mother, if there be no father), the party claiming to be aggrieved is not restricted to an appeal directly from the order making the appointment, but may, by petition or other proceeding in the Orphans' Court, impeach the regularity and validity of the appointment.—*Redman v. Chance*, 32 Md. 42.

(d) The Orphans' Court has the right and the power to appoint a guardian for an infant whose father or mother may be living at the time of the appointment, provided notice be given to such father (or mother, if the father be not living), to show cause why the appointment should not be made.—*Redman v. Chance*, 32 Md. 42.

(e) The notice to a father or mother to show cause why a guardian should not be appointed for a child must be by summons if the party be within reach of the process of the court, and by publication if beyond its jurisdiction.—*Redman v. Chance*, 32 Md. 42.

(f) An appeal will not lie from an order of the Orphans' Court appointing a guardian.—*Compton v. Compton*, 2 Gill 241.

### § 14. Acceptance and oath of office.

### § 15. Bond.

#### Cross-References.

Liabilities on bonds, see post, §§ 173-182.

Special bond for sale of property under order of court, see post, § 92.

Liability of judge for accepting insufficient bond, see "Judges," § 36.

#### Annotation.

Necessity of bond to make guardian's acts valid.—33 L. R. A. 759, note.

### § 16. Issuance of letters.

### § 17. Operation and effect of appointment.

#### Cross-References.

Right of sureties to attack appointment, see post, § 173.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Appointment of guardian for infant defendant in attachment as transferring jurisdiction to probate, see "Courts," § 478.

Estoppel in suit on bond to deny validity of appointment, see "Estoppel," § 32.

*Annotation.*

Effect of attempt by father to appoint guardian for his child against the surviving mother.—13 L. R. A. (N. S.) 288, note.

§§ 18-20. (See Analysis.)

§ 21. Marriage of ward.

*Cross-References.*

As affecting time of accrual of action on bond, see post, § 182.

Transactions between guardian and husband of ward, see post, § 69.

§ 22. Death of ward.

(a) One of two joint executors was appointed guardian for the testator's son; and, in an action on his bond as guardian by the administrator of the son, it appeared that many years before the suit the executors had received a considerable amount of assets, but had not settled any account with the Orphans' Court, and that defendant's co-executor was dead. *Held*, that defendant's guardianship ceased on the death of his ward, and that as it did not appear that he died after defendant's co-executor, when defendant became sole executor, the action could not be sustained, since, if the executorship were joint at the time of the ward's death, the law would not adjudge the ward's proportion of the property to be in his hands as guardian after the time limited for the settlement of the estate, whether a final account had been passed by the Orphans' Court or not.—*Watkins' Adm'rs v. State*, 2 G. & J. 220. [Cited and annotated in 16 L. R. A. (N. S.) 209, on transfer of funds or securities from one estate to another by common trustee.]

§ 23. Resignation and discharge.

§ 24. Disqualification.

§ 25. Removal.

*Cross-References.*

Accounting on removal, see post, § 145.

Effect on liability of sureties on bond, see post, § 176.

(a) In a proceeding for the removal of a guardian and the appointment of petitioner in his stead, the Orphans' Court passed an order granting the petition so far as it related to the removal of defendant, dismiss-

ing the part of it which related to the appointment of petitioner, and on the same day made another order appointing a third person guardian, and an appeal was entered in this form "enter an appeal from the judgment in this case to the Court of Appeals." *Held*, that, though the order for the appeal should have been more specific, yet, inasmuch as the defendant could not appeal from the appointment of a new guardian if he had been properly removed, and as he had no reason to complain of the court's refusal to appoint the petitioner, his appeal would be considered as an appeal from the order removing him.—*Owen v. Pye*, 115 Md. 400, 80 Atl. 1007.

(b) Code 1904, art. 93, § 236, which empowers the Orphans' Court on the application of an infant or some one in his behalf suggesting the grounds therein stated for the removal of a guardian "to inquire into the same and at its discretion remove such guardian," confers only a sound legal discretion to be used conformably to the settled rules of law, and, if erroneously exercised, its determination is subject to review on appeal.—*Owen v. Pye*, 115 Md. 400, 80 Atl. 1007. (See Code 1911, art. 93, § 237.)

(c) In a proceeding for the removal of a guardian, *held*, that the evidence was insufficient to show that "the guardian is or has become unable to bestow such direct personal care and supervision over the person or estate of his ward as is requisite to the proper discharge of duties of guardianship"; that being the only possible ground under Code 1904, art. 93, § 236, on which the petitioner could have had any standing in court, and hence not to support the court's order of removal.—*Owen v. Pye*, 115 Md. 400, 80 Atl. 1007. (See Code 1911, art. 93, § 237.)

(d) Though Code 1888, art. 93, § 173, as amended by act 1892, c. 100, forbids a guardian to sell the ward's property without leave, and provides that he may be removed for so doing, such a sale is not necessarily ground for removal where the guardian believed he had leave to sell, and his bond fully protects the estate from loss.—*Macgill v. McEvoy*, 85 Md. 286, 37 Atl. 218. (See Code 1911, art. 93, § 174.)

(e) A guardian should not be removed for "mental or physical incapacity" (Code 1888, art. 93, § 232, as amended by act 1890, c. 425) merely because he was absent on account of ill health for several months, when he had recovered his health before the application for removal was made, and the estate sustained no loss from his absence.—*Macgill v. McEvoy*, 85 Md. 286, 37 Atl. 218. (See Code 1911, art. 93, § 237.)

(f) Code 1888, art. 93, § 232, providing that the Orphans' Court may, on application suggesting misconduct of a guardian, "at its discretion," remove him, confers a legal, not an arbitrary discretion; and hence an order removing or refusing to remove a guardian is appealable, Code, art. 5, § 58, giving an appeal from "all" decrees and orders of the Orphans' Court.—*Macgill v. McEvoy*, 85 Md. 286, 37 Atl. 218. (See Code 1911, art. 93, § 237; art. 5, § 60.)

(g) To authorize the removal of a guardian, under Code 1860, art. 93, § 232, providing that the Orphans' Court, on the application of an infant, or any person in his behalf, "suggesting improper conduct in any guardian," either as to the person or property of the infant, may remove such guardian, an allegation, sustained by proof, must be filed, that the guardian has been guilty of "improper conduct" in respect of the care of the property or of the person of the ward.—*Slattery v. Smiley*, 25 Md. 389. (See Code 1911, art. 93, § 237.)

(h) Upon an appeal from an order refusing to revoke the appointment of a guardian, it will be presumed that the court had jurisdiction to make the appointment.—*Lefever v. Lefever*, 6 Md. 472.

### § 26. Death of guardian.

#### Cross-Reference.

Administrator of guardian as party to action for accounting, see "Executors and Administrators," § 438.

### § 27. Appointment of successor.

## III. CUSTODY AND CARE OF WARD'S PERSON AND ESTATE.

#### Cross-References.

Actions by or against guardians, see post, §§ 116-136.

Foreign and ancillary administration, see post, § 168.

Functions and acts covered by bond, see post, § 175.

Authority of guardian to consent to license for saloon on contiguous property, see "Intoxicating Liquors," § 66.

Custody and control of child by parents, see "Parent and Child," § 2.

Determination of right to custody on habeas corpus, see "Habeas Corpus," §§ 14, 99.

Expenditures in respect to Indian lands, see "Indians," § 15.

Investment of ward's funds in land by guardian as equitable conversion of funds, see "Conversion," § 20.

Liability of property to taxation, see "Taxation," § 83.

Listing property for taxation, see "Taxation," § 33.

Opening or setting aside settlement of decedent's estate, see "Executors and Administrators," § 516.

Payment of fiduciary funds for conveyance to guardian as creating resulting trust, see "Trusts," § 84.

Payment of ward's distributive share in estate of decedent, see "Executors and Administrators," § 304.

Place of taxation of ward's property, see "Taxation," § 270.

Power of guardian to petition for probate of will, see "Wills," § 219.

Right of guardian to appointment as administrator of estate of ward's parent, see "Executors and Administrators," § 17.

Rights of trustee in bankruptcy in property held by bankrupt as guardian, see "Bankruptcy," § 140.

Right to damages arising from construction of municipal improvement, see "Municipal Corporations," § 398.

Tender of payment to guardian on redemption from mortgage foreclosure, see "Mortgages," § 605.

### § 28. Representation of ward by guardian.

#### Cross-Reference.

Declarations of guardian as evidence against ward, see "Evidence," § 251.

### § 29. Custody and control of person.

#### Cross-References.

Consent of guardian to adoption of ward, see "Adoption," § 7.

Determination of right to custody on habeas corpus, see "Habeas Corpus," §§ 14, 99.

Domicile of ward, see "Domicile," § 5.

Inmates of reformatory, see "Reformatories," § 7.

Seduction of female ward by guardian, see "Seduction," § 6.

#### Annotation.

Right to remove infant from the state.—58 L. R. A. 931, note.

(a) A decree of divorce gave the custody of a daughter to the father, but allowed the



mother the privilege of visiting her. *Held*, that, the power granted to the father, by St. 12 Car. II. § 24, to appoint a testamentary guardian, was not taken away by Code 1860, art. 16, § 26, but that such guardian could not refuse the mother access to the child as provided in the decree.—*Hill v. Hill*, 49 Md. 450, 33 Am. Rep. 271. (See Code 1911, art. 16, § 38; Alex. Brit. Stat. [Coe's ed.] 630.) [Cited and annotated in 13 L. R. A. (N. S.) 293, on effect of father's attempt to appoint guardian for child against surviving mother.]

### § 30. Support and education.

#### Cross-References.

Borrowing money for support, see post, § 50.

Credit on accounting, see post, § 148.

Purposes of sale of property, see post, § 77.

Reimbursement to guardian, see post, § 68.

(a) In an action on a guardian's bond, it was *held*, that, where the Orphans' Court appointed a certain person guardian on the ground that he agreed not to take anything for the support of the ward, he could recover nothing on that account, although on settlement with the Orphans' Court his charge for it had been allowed.—*State v. Baker*, 8 Md. 44.

(b) Where the sum of money allowed by the Orphans' Court to a guardian for the maintenance and education of his ward exceeded the annual income of the ward's estate, it was *held*, in an action against the guardian by his ward, that the guardian was concluded thereby, and that the jury could not exceed the sum so allowed to him.—*Spedden v. State*, 3 H. & J. 251.

(c) A guardian, in proceedings to settle his accounts as such, cannot charge for board furnished, before his appointment, as necessities to the ward.—*Spedden v. State*, 3 H. & J. 251.

### § 31. Services and earnings.

### § 32. Appraisal and inventory of estate.

#### Cross-References.

Appraisal of property to be sold under order of court, see post, § 93.

Prerequisite to appointment of tutor, see ante, § 13.

Property covered by bond of guardian, see post, § 174.

### § 33. Collection of assets.

#### Cross-References.

Actions, see post, § 118.

Expenditures for costs, see post, § 58.

(a) Where, by the residuary clause of a will, one-half of the residue is equally divided between two legatees, and one of them is an infant who is to receive his share on coming of age, his guardian is entitled to receive his share from the trustee under the will, and to apply the income to the infant's maintenance and support, there being nothing in the will to indicate an intention to withhold it from his maintenance during minority, though possession and control of the principal was deferred as it would have been by law if the will had not so provided.—*Strite v. Furst*, 112 Md. 101, 76 Atl. 498.

(b) In a suit by a guardian, duly appointed, to compel defendant to pay to him money alleged to have been collected as guardian, it appeared that a mutual benefit society had paid to defendant, as guardian of the infant, a certain sum, which was due the infant as beneficiary of a deceased brother. The money was paid by check, which was deposited in a bank to the credit of defendant, "guardian of" the infant. *Held*, to justify a decree directing defendant to pay to the guardian the fund so received.—*Norris v. Baumgardner*, 97 Md. 534, 55 Atl. 619.

(c) H., a guardian, having used the money of his wards to buy land, and becoming embarrassed, conveyed the land by an absolute deed to K. upon a pretended consideration, telling K. he did so for the purpose of securing it to his wards. K. afterwards sold the land, and paid the whole purchase money to H. A., a surety on H.'s bond as guardian, was compelled to pay moneys misappropriated by H. On a bill filed by A. to make K. liable for having permitted H. to receive the purchase money of the property, *held*, that, at the time the property was sold, H. was still guardian, and as such entitled to receive all money belonging to his wards.—*Armitage v. Snowden*, 41 Md. 119. [Cited and annotated in 6 L. R. A. (N. S.) 794, on legal remedy defeating equitable jurisdiction to follow trust funds.]

(d) Where an estate is devised to a trustee to hold for the maintenance of infants until they attain their majority, their guar-

dian must take the profits and apply them according to the direction of the will, instead of the infants being allowed to go into possession and themselves gather the profits.—*Tilly v. Tilly*, 2 Bland 436.

(e) A guardian has no right to retain money received by him from the executor unless the executor has passed a final account with the Orphans' Court, and an order has been passed by that court to pay over such money to the guardian.—*Wilson v. Boyer*, 1 H. & J. 297.

### § 34. Title to property in general.

### § 35. Possession and use of property.

#### Cross-Reference.

Adverse possession of ward's land by guardian, see "Adverse Possession," § 61.

(a) Code 1904, art. 93, § 149, provides that a guardian appointed by the Orphans' Court or by will shall be entitled to possession "of all the property of the infant within the state, or which may be obtained by such guardian out of the state by virtue of such guardianship or appointment." *Held*, in view thereof, that a guardian, without acquiring any estate in his ward's property, was the proper custodian thereof.—*Strite v. Furst*, 112 Md. 101, 76 Atl. 498. (See Code 1911, art. 93, § 150.)

(b) When a final account has been passed, or the time limited by law for the settlement of an estate has elapsed, and the same person who is executor or administrator is also guardian to the parties entitled to the surplus, the law will adjudge such surplus in his hands in that character in which his duty requires that he should hold it. The transfer in such cases is effected by operation of law, and requires no act of the party himself.—*In re Williams' Estate*, 1 Md. Ch. 25.

### §§ 36-39. Management of estate.

#### Cross-References.

Consent of tutrix to settlement of account of executor, see "Executors and Administrators," § 508.

Removal of property to other state as depriving ward of property without due process of law, see "Constitutional Law," § 278.

#### Real estate.

Action for possession, see post, § 118.

Expenditures for improvements, see post, § 58.

Appearance of guardian in proceedings for sale of decedent's real estate, see "Executors and Administrators," § 338.  
Authority of guardian to consent to license for saloon on contiguous property, see "Intoxicating Liquors," § 66.

#### Annotation.

Liability for carrying on business for ward's benefit.—40 L. R. A. (N. S.) 223, note.

### §§ 40-43. Sale.

#### Cross-References.

Between guardian and ward, see post, § 69.

Sales under order of court, see post, §§ 76-115.

(a) Stock standing in the name of the ward on the books of an incorporation were transferred by his guardian. The certificates of the stock were cancelled by the corporation, and new ones issued in their stead to the transferee. *Held*, that this was a "sale or removal" by the guardian, within the meaning of act 1843, c. 304, and, having been made without an order of the Orphans' Court, as required by the act, it was void, and did not effect the rights of the ward.—*City of Baltimore v. Norman*, 4 Md. 352. (See Code, art. 93, § 174.)

### § 44. Lease.

(a) Guardians, who have the lands of infants intrusted to them, may make leases to try title; but the privilege is not extended to those guardians to whom belongs the custody of the infants alone.—*Magruder v. Peter*, 4 G. & J. 323.

(b) Whoever enters upon the estate of an infant is considered, in equity, as entering as his guardian; and, after the infant comes of age, he may, by bill, recover the rents and profits after a recovery of the land in ejectment. If a person so entering shall continue the possession after the infant comes of age, equity will decree an account against him as guardian, and carry it on after the infancy is determined.—*Drury v. Conner*, 1 H. & G. 220.

### § 45. Mortgage or pledge.

#### Cross-References.

Legal mortgage on tutor's property in favor of ward, see post, § 74.

Right of secured creditor to levy on land mortgaged by guardian and subsequently coming to him as heir of the ward, see "Mortgages," § 218.

## § 46. Indorsement and transfer of bills and notes.

## §§ 47-52. Contracts.

### Cross-References.

Between guardian and ward, see post, § 69.

Equity jurisdiction to enforce illegal contract, see "Equity," § 3.

### Annotation.

Guardian's consent as affecting infant's contract.—L. R. A. 1915C, 362, note.

Liability of guardian who signs contract adding words indicating representative capacity to his signature.—42 L. R. A. (N. S.) 60, note.

(a) Where a guardian removes incumbrances on his ward's property, he will be entitled to the benefit of the lien of those incumbrances; and if he borrows money for the purpose of removing them, the lender, whose money has been applied for that purpose, is entitled to be subrogated to the guardian's rights.—*Donohoe v. Daniel*, 58 Md. 595.

## § 53. Investments.

### Cross-References.

Lien on land purchased by guardian with guardianship funds, see "Liens," § 7.

Mechanic's lien on guardian's interest in land wrongfully purchased with ward's money, see "Mechanics' Liens," §§ 187, 189.

Payment of fiduciary funds for conveyance to guardian as creating resulting trust, see "Trusts," § 84.

### Annotation.

Personal liability for losses from investments.—44 L. R. A. (N. S.) 873, note.

(a) The retention of money in his own hands by the guardian of a ward and the giving of a note therefor cannot be said to amount to an "investment." The accepted definitions of that term, as well as its derivation, involve the idea of the clothing or investiture of the funds with new and different attributes. It is defined "to convert into some other form of wealth, usually of a more or less permanent nature," and "to be the laying out of money in the purchase of some species of property, especially a source of income or profit," and giving money for some other property, or the laying out of money in such manner that it may produce a revenue.—*Fidelity & Deposit Co. v. Freud*, 115 Md. 29, 80 Atl. 603.

(b) A guardian has no power, during the minority of the ward, to invest money belonging to the latter without authority from the Orphans' Court.—*Forrester v. State*, 46 Md. 154.

(c) It is the duty of a guardian, before investing the money of his ward, to obtain the sanction of the Orphans' Court to such investment; and, if he invests without such sanction, it is at his own risk, and he will be held answerable for loss arising from the investment.—*Carlyle v. Carlyle*, 10 Md. 440. [Cited and annotated in 44 L. R. A. (N. S.) 896, 917, 941, 944, on personal liability of trustee for losses.]

(d) Under act 1831, c. 315, § 5, authorizing the Orphans' Court to order a guardian to invest in stock any funds received by him, and to direct the manner in which such funds shall be invested, the Orphans' Court may direct a guardian to invest the money of his ward in stock yielding 6 per cent. on the face of the bonds, though the same may be selling for so much above par as not to yield 6 per cent. per annum on the amount invested, although act 1816, c. 154, § 5, directs that funds held by guardians shall be invested so as to net at least 6 per cent.—*Ex parte Stone*, 2 Md. 292. (See Code 1911, art. 93, §§ 172, 242.)

(e) The Orphans' Court, by its order, directed an administrator to retain in his hands, as a loan to himself, the sum of \$2,000; it being the amount of a bond which he had executed to the guardian and the ward, and secured by mortgage. *Held*, that, this order was a rightful exercise of power by the Orphans' Court, because it in effect treats the mortgage from the administrator to the guardian as an investment by the latter.—*O'Hara v. Shepherd*, 3 Md. Ch. 306. [Cited and annotated in 44 L. R. A. (N. S.) 941, 947, on personal liability of trustee for losses.]

(f) By the several acts of 1798, 1816, and 1819, the Orphans' Courts were empowered to direct guardians of minors to invest the proceeds of the sale of their property, real and personal, in public stocks or other permanent funds, in the name of their wards; and, though they direct that the securities shall be made in the name of the infant wards, yet the direction is mere matter of

form, and, if not followed, will not have the effect to avoid the securities.—*O'Hara v. Shepherd*, 3 Md. Ch. 306. (See Code, art. 93, § 172.) [Cited and annotated, see supra.]

#### § 54. Interests on funds of estate.

##### Cross-Reference.

Accounting for interest, see post, § 147.

(a) Where the entire estate in the hands of a guardian is not more than necessary to pay expenses proper and necessary to be made, and which were made, the court will not reverse a decree in order to charge the guardian with a greater sum by way of interest.—*Magruder v. Darnall*, 6 Gill 269.

(b) It is the duty of a guardian to a female ward, on her arrival at the age of 16 years, to exhibit a final account to the Orphans' Court, and to deliver to the ward all her property in his hands. So far as the property of the ward in his hands consists of money, this constitutes a contract to pay money when she attains the age of 16, and the ward is entitled to interest absolutely from that time.—*Fridge v. State*, 3 G. & J. 103, 20 Am. Dec. 463.

#### § 55. Deposits.

##### Cross-References.

Liability of bank or trust company, see "Banks and Banking," §§ 130, 134, 315. Preferred claim against bank on insolvency, see "Banks and Banking," § 80.

##### Annotation.

Liability of guardian for loss of ward's money deposited in bank.—21 L. R. A. (N. S.) 399, note.

(a) A guardian who has deposited money in a bank under the sanction of the Orphans' Court will be protected from loss, though the bank may become insolvent.—*O'Hara v. Shepherd*, 3 Md. Ch. 306. [Cited and annotated, see supra, § 53.]

(b) A guardian, on the day of the receipt of money belonging to his ward, deposited it in his own name in a banking institution then in good credit, but which subsequently failed, and took a certificate thereof payable to himself or order. Held, that, the loss should fall upon him, though on the day of deposit, by indorsement on the certificate, he declared it to be the property of his ward, and placed in bank for his benefit.—*Jenkins*

*v. Walter*, 8 G. & J. 218, 29 Am. Dec. 539. [Cited and annotated in 14 L. R. A. 105, on liability of executor or trustee for loss of funds by failure of bank; in 21 L. R. A. (N. S.) 400, on liability of guardian for loss of bank deposit; in 45 L. R. A. (N. S.) 13, 15, on trustee's liability for loss of bank deposit.]

#### § 56. Loans.

##### Cross-Reference.

Care in loaning money as question for jury, see post, § 132.

(a) An administrator, with the sanction of the guardian, loaned a certain sum belonging to his intestate's estate, and the property of the ward, a minor, and assigned the mortgage taken for its security to the guardian. The Orphans' Court afterwards passed the accounts of the guardian, in which this mortgage was treated as part of the ward's estate. Held, that, by this action of the Orphans' Court, they had given their sanction to this transition as effectually as if they had previously ordered it, and that the administrator was not responsible for loss arising therefrom.—*O'Hara v. Shepherd*, 3 Md. Ch. 306. [Cited and annotated, see supra, § 53.]

(b) If a loan by a guardian be sanctioned by the Orphans' Court, the guardian will not be liable for loss, except it arise from his subsequent neglect.—*O'Hara v. Shepherd*, 3 Md. Ch. 306. [Cited and annotated, see supra, § 53.]

#### § 57. Gifts.

#### § 58. Expenditures.

##### Cross-References.

Compensation of guardian, see post, §§ 150-152.

For support and education, see ante, § 30. In respect to Indian lands, see "Indians," § 15.

(a) The Orphans' Court has no power to authorize a guardian to erect buildings on the land of his ward at an expense exceeding the ward's income.—*Brodess v. Thompson*, 2 H. & G. 120.

#### § 59. Submission to arbitration.

##### Annotation.

Power of general guardian to submit cause of action for arbitration.—70 L. R. A. 175, note.

## § 60. Confession of judgment.

## § 61. Estoppel.

### Cross-Reference.

To assert invalidity of guardian's sale, see post, § 105.

(a) A guardian of a minor was removed, and one of the sureties appointed guardian, and, after passing two accounts in the Orphans' Court, the last guardian was removed and another was appointed, and the original guardian was ordered to pay over and deliver to the latter all the property belonging to the ward. The order was not obeyed, and neither the second nor the third guardian in fact received any portion of the ward's property held by the original guardian. *Held*, that, if, in an action on the original guardian's bond, it appeared that the second guardian, who was the surety thereon, had charged himself with the funds in the hands of his predecessor, though nothing was received by him, the second guardian and his sureties would be concluded by such admissions.—*Byrd v. State*, 44 Md. 492.

## § 62. Individual interest in transactions.

### Cross-References.

Purchase of property at guardian's sale, see post, § 99.

Sufficiency of title of guardian purchasing at foreclosure sale of land of ward to support contract of sale, see "Vendor and Purchaser," § 129.

(a) Code 1904, art. 93, § 171, authorized the Orphans' Court to order a guardian who has received moneys belonging to his ward to invest the same in mortgages on unincumbered real estate worth double the loan or such public stock, permanent funds, "or other good securities," or order the same invested in land. Section 172 provides that such moneys shall be invested in the name of the ward and transferable only under order of court. Section 166 empowers the court to order the proceeds of sale of leasehold estates of the ward to be invested in "bank stock or any other good security." Section 241 authorizes the court to order a guardian to invest in bank or other incorporated stock, or any other good security, and that the court shall direct the manner and form in which such money shall be invested. Sections 189 and 192, referring to the transfer

of the ward's estate to a substituted guardian, speaks of a delivery as including "bonds, notes and evidences of debt" and other securities. *Held*, that, a loan of the ward's funds to the guardian himself, for which he gave his individual note, was not an investment or "good security" which the court had authority to authorize, as it created an adverse interest in the guardian.—*Fidelity & Deposit Co. v. Freud*, 115 Md. 29, 80 Atl. 603. (See Code 1911, art. 93, §§ 172, 173, 190, 193, 242.)

(b) Code 1904, art. 93, § 177, providing that the account of a guardian shall state his expenditures, not exceeding the income of the estate, unless allowed by court, and shall not be charged interest for balance of money, unless he shall consent to take the same on interest, was intended to deal with the disposition of the income of a ward's estate, and did not authorize the Orphans' Court to sanction a loan of the infant's funds to the guardian.—*Fidelity & Deposit Co. v. Freud*, 115 Md. 29, 80 Atl. 603. (See Code 1911, art. 93, § 178.)

(c) Funds belonging to wards were deposited in bank by the guardian in his own name, on the day of their receipt, but the bank account showed that all, except a small balance, were withdrawn by him within a few months. The guardian was also a merchant, but he testified, and the bank account showed, that only a small portion of the funds was used in the business; the larger amount being used for other purposes. More than three years afterwards, the guardian having meanwhile taken a partner in business, the firm assigned for benefit of creditors. *Held*, that the stock of goods passing to the assignee could not be charged with the trust fund drawn out of the bank, as being the product of such fund, to the exclusion of other claims, especially when the evidence showed that the greater part of the goods had been purchased on credit.—*Englar v. Offutt*, 70 Md. 78, 16 Atl. 497, 14 Am. St. Rep. 332.

(d) H., a guardian, having used the money of his wards to buy land, and, becoming embarrassed, conveyed the land by an absolute deed to K. upon a pretended consideration, telling K. he did so for the purpose of secur-

ing it to his wards. K. afterwards sold the land and paid the whole purchase money to H. A., a surety on H.'s bond as guardian, was compelled to pay moneys misappropriated by H. On a bill filed by A. to make K. liable for having permitted H. to receive the purchase money of the property, *held*, that, the wards had a lien upon the property for the moneys used by H., and, if the moneys thus used constituted the whole original purchase money, a court of equity would, upon application, have decreed it as belonging to them.—*Armitage v. Snowden*, 41 Md. 119. [Cited and annotated in 6 L. R. A. (N. S.) 794, on legal remedy defeating equitable jurisdiction to follow trust funds.]

### § 63. Fraud.

(a) A guardian purchased land for his ward, and took a deed to himself, and afterwards conveyed the land to the ward. *Held*, that, the fact that the consideration in the two deeds was different was not conclusive evidence of fraud.—*Smith v. Davis*, 49 Md. 470.

### § 64. Waste, conversion, or embezzlement by guardian.

#### Cross-References.

Ground for removal of guardian, see ante, § 25.  
Conversion by guardian as swindling, see "False Pretenses," § 2.  
Criminal responsibility for embezzlement, see "Embezzlement," § 18.  
Cure of invalid sale by prescription, see "Limitation of Actions," § 72.  
Investment of ward's funds in land by guardian as equitable conversion of funds, see "Conversion," § 20.  
Right of heir whose property is wasted to contribution from coheir, see "Descent and Distribution," § 81.

### § 65. Loss of property.

### § 66. Torts.

### § 67. Presentation and payment of claims.

#### Cross-References.

Previous allowance by court for support, see ante, § 30.  
Claim for necessities as obligation of deceased ward's estate, see "Executors and Administrators," § 202.  
Claims against guardian as enforceable against homestead, see "Homestead," § 90.

### § 68. Reimbursement and indemnity to guardian.

#### Cross-Reference.

Credits, see post, § 148.

### § 69. Conveyances, contracts, and other transactions between guardian and ward.

#### Cross-Reference.

Private accounting and settlement, see post, § 164.

(a) Where the relation of quasi guardian and ward has existed, every intendment should be made in favor of the ward in the construction of contracts between them made soon after the termination of such relation.—*Spalding v. Brent*, 3 Md. Ch. 411.

### § 70. Ratification of unauthorized acts.

(a) Acts and words of acquiescence in a guardian's transactions, said and done by the ward after arriving of age, will not bind her, unless done with a full knowledge of her rights and of the circumstances surrounding the transaction.—*Trader v. Lowe*, 45 Md. 1.

(b) Where a guardian illegally sells and transfers the stock of an incorporated company which was the property of the ward, contrary to the act requiring a previous order of the Orphans' Court, the ward is not confined to his action on the guardian's bond, but has the cumulative remedy against the corporation, may repudiate the sale as void, and recover the stock thus illegally transferred.—*State v. Bishop*, 24 Md. 310; *State v. Murray*, Id. (See Code 1911, art. 93, § 174.)

### § 71. Joint guardianship.

### § 72. Successive guardianships.

(a) Where a guardian dies insolvent, and his surety is appointed his successor and charges himself with the balance due the ward from the first guardian, this makes the second guardian liable to the ward.—*Flickinger v. Hull*, 5 Gill 60. [Cited and annotated in 31 L. R. A. 66, on enjoining judgments against or in favor of sureties.]

### § 73. Representatives of deceased guardians.

#### Cross-References.

Liability to account, see post, § 139.  
Administrator of guardian as party to action for accounting, see "Executors and Administrators," § 438.

(a) Equity has jurisdiction of a bill filed by the representatives of a ward against the executors of a guardian in whose hands the estate of the infant remains unaccounted for at his death.—*Barnes v. Crain*, 8 Gill 391.

(b) Assumpsit lies by a ward against a guardian's executrix for the value of property of the ward alleged to have been converted, though defendant was a feme covert at the time of receiving it.—*Green v. Johnson*, 3 G. & J. 389. [Cited and annotated in 47 L. R. A. (N. S.) 451, on limitation of suits to compel accounting by, or to recover on bond of guardian; in 26 L. R. A. (N. S.) 789, on right to maintain action at law against guardian for guardianship funds before settlement of account.]

#### § 74. Mortgage or lien of ward on property of tutor.

##### Cross-References.

Classification of claim of ward against estate of deceased guardian, see "Executors and Administrators," § 261.

Debt due from guardian to ward as preferred claim in bankruptcy, see "Bankruptcy," § 350.

Liability of estate of deceased husband of guardian for funds of ward, see "Executors and Administrators," § 202.

Lien of ward on property bought by guardian as prior to that of assignee of balance due on purchase price, see "Assignments," § 98.

Right of guardian to exemptions, see "Exemptions," §§ 72, 75.

### IV. SALES AND CONVEYANCES UNDER ORDER OF COURT.

##### Cross-References.

Sales without order of court, see ante, §§ 41-43.

Appearance of guardian in proceedings for sale of decedent's real estate, see "Executors and Administrators," § 338.

Invalidity of order of sale as ground for equitable relief, see "Judgment," § 415.

Sale of property of infants, see "Infants," §§ 35, 37-45.

Special guardian to sell property of infant, see "Infants," § 39.

#### § 75. Nature of remedy.

#### § 76. Statutory provisions.

#### § 77. Purposes for which authorized.

(a) A guardian who was also the widowed mother of her wards petitioned for the privilege of selling the real estate of her wards, and the commissioners appointed to ascertain the actual condition of the property and whether a sale was advisable reported that,

owing to the situation and nature of the property, it was extremely liable to damage and deterioration in value; that the expense of keeping it up was considerable, and needed the management of an experienced man; that the guardian was not competent to oversee and care for the property; that it would bring as much under an immediate sale as it would during any short period in the future; and that, if the proceeds were invested in public stock, the interest in excess of the amount needed for the support of the wards would equal any future advance in value. Held, that the property should be sold.—*In re Williams*, 3 Bland 186.

#### § 78. Persons entitled to apply.

(a) The guardian of an infant devisee filed a bill in his own name, as guardian, for the sale or lease of certain real estate, under act 1868, c. 273, authorizing such sale or lease, "on application of any of the parties in interest," in accordance with the statute. Held, that the guardian was not a party in interest, but that the fact that the petition had been filed in his own name as guardian, and not in the name of the infant devisee by his next friend, was not such an irregularity as would necessarily defeat the jurisdiction of the court.—*Newbold v. Schlens*, 66 Md. 585, 9 Atl. 849. (See Code, art. 16, § 228.) [Cited and annotated in 21 L. R. A. 53, on purchaser at judicial sale as bona fide purchaser.]

#### §§ 79-85. (See Analysis.)

#### § 86. Petition or other application.

(a) A decree for the sale of minors' lands is not invalid because the bill did not pray for an investment of the proceeds, as by Code 1860, art. 16, § 45, it is provided that such proceeds shall be invested for the benefit of the infants under the order of the court.—*Mumma v. Brinton*, 77 Md. 197, 26 Atl. 184. (See Code 1911, art. 16, § 66.)

#### § 87. Citation or notice.

##### Annotation.

Notice of application by guardian for leave to sell infant's real estate as jurisdictional.—8 L. R. A. (N. S.) 1215, note.

#### § 88. Hearing of application in general.

### § 89. Determination as to necessity for sale, mortgage, or lease.

(a) Act 1818, c. 133, § 2, relative to the mode of proceeding upon the petitions by guardians for the sale of infant's real estate, required a commission to three freeholders, etc., provided that their report shall not be conclusive on the court, but they may, in their discretion, examine witnesses, and have other testimony, etc. *Held*, that said act makes it discretionary with the court to act upon the report of the commissioners or to examine witnesses. The only indispensable prerequisite is that, under all circumstances, the court shall be satisfied that a sale would be for the interest of the infant. —*Bolgiano v. Cooke*, 19 Md. 375. (See Code 1911, art. 16, § 58.)

### § 90. Order or decree.

#### Cross-Reference.

Invalidity as ground for equitable relief, see "Judgment," § 415.

### § 91. Oath.

### § 92. Special bond for sale.

#### Cross-References.

Bond required on receiving proceeds of sale of property, see ante, § 34.  
Liabilities on bonds, see post, §§ 173-182.  
Computation of time, see "Time," § 11.

#### Annotation.

Necessity of bond on sale of infant's land. —33 L. R. A. 761, note.

### § 93. Appraisal of property to be sold.

#### Cross-Reference.

Failure to sign report of appraisal, see post, § 108.

### §§ 94-107. Sale.

#### Cross-References.

Individual interest of guardian in transaction in general, see ante, § 62.  
Collateral attack on order of sale, see ante, § 90.  
Color of title, see "Adverse Possession," § 77.

(a) The husband of the guardian of an infant is under no disability from becoming the purchaser at a sale under a decree of court of real estate belonging to such infant. —*Gregory v. Lenning*, 54 Md. 51.

(b) Although proceedings in equity, filed by a guardian and prochein ami of an infant, to sell her lands, to which she was not summoned or made a party, are not admissible

evidence against her or those claiming under her, yet where, after a decree for a sale and a sale in fact, the infant whose lands were affected united with her husband in a petition in the cause, and they made themselves parties thereto and ratified what had been done, and called upon the court to enforce the sale or resell the property, it was *held*, that, after ratification of the sale, payment of the purchase money to the trustee, and conveyance of the land by the trustee to the purchaser, the husband of the infant will not be permitted to insist that the proceedings are null and void, because of the non-summons of his wife. —*Hunter v. Hatton*, 4 Gill 115, 45 Am. Dec. 117.

### § 108. Rights and liabilities of purchasers.

#### Cross-References.

Grantees of persons not entitled to purchase at guardian's sale, see ante, § 99.  
Ground for removal of guardian, see ante, § 25.  
Color of title, see "Adverse Possession," § 77.  
Easement of purchaser over lands of ward, see "Easements," § 17.

#### Annotation.

Reimbursement of subrogation of purchaser on annulling sale by guardian. —69 L. R. A. 45, note.

### §§ 109-115. (See Analysis.)

## VI. ACTIONS.

#### Cross-References.

On guardians' bonds, see post, § 182.  
By infants, see "Infants," §§ 70-112.  
Conditions precedent to action to restrain collection of tax, see "Taxation," § 609.  
For taxes, see "Taxation," § 590.  
Joinder of causes of action, see "Action," §§ 46, 50.  
Misjoinder of causes of action, see "Action," § 38.  
Prochein ami or next friend in suits between husband and wife, see "Husband and Wife," § 205.  
Right to maintain action for partition, see "Partition," § 32.  
To open or set aside settlement of decedent's estate, see "Executors and Administrators," § 516.

### § 116. Capacity of guardian to sue and be sued in general.

#### Cross-Reference.

Waiver of objection by failure to demur or answer, see post, § 130.



### § 117. Rights of action between guardian and ward.

#### Cross-Reference.

For accounting, see post, § 146.

To set aside settlement, see post, § 165.

#### Annotation.

Right of ward to maintain action at law against guardian for guardianship funds, after termination of guardianship, but before settlement of account.—26 L. R. A. (N. S.) 789, note.

### § 118. Rights of action by guardian or ward or both.

#### Cross-References.

Collection of assets, see ante, § 33.

Right of action in guardian's name on note assigned to him, see "Bills and Notes," § 443.

(a) Stock standing in the name of the ward on the books of a corporation was transferred by his guardian, the certificates of the stock were cancelled by the corporation, and new ones were issued in their stead to the transferee. *Held*, that this was a "sale or removal" by the guardian, within the meaning of act 1843, c. 304, and, having been made without an order of the Orphans' Court, as required by the act, it was void, and did not affect the rights of the ward, and that the act of the corporation in cancelling the certificates was such a tortious conversion of the ward's property as to make a demand and refusal unnecessary before suit in trover.—*City of Baltimore v. Norman*, 4 Md. 352. (See Code 1911, art. 93, § 174.)

§§ 119-122. (See Analysis.)

### § 123. Jurisdiction.

#### Cross-References.

Jurisdiction of district court for Indian Territory sitting as probate court, see "Courts," § 435.

Jurisdiction of federal courts as affected by citizenship of guardian, see "Courts," § 311; "Removal of Causes," § 32.

(a) The relation of guardian and ward, and the rights and obligations which grow out of it, are peculiarly within the jurisdiction of a court of equity; and its power to afford relief for a breach of trust cannot be questioned unless taken away by some express statutory enactment.—*Crain v. Barnes*, 1 Md. Ch. 151.

(b) A proceeding by the representatives of a ward against the executors of a guardian

to recover a legacy bequeathed to the ward, and which the guardian had received from the executors of the testator, who made the bequest, is clearly within the jurisdiction of a court of equity.—*Crain v. Barnes*, 1 Md. Ch. 151.

### § 124. Venue.

### § 125. Time to sue and limitations.

#### Cross-References.

Action for accounting, see post, § 146.

Application of general statute, see "Limitation of Actions," § 37.

Computation of period, see "Limitation of Actions," § 72.

Judgment against guardian by bank receiver as stopping running of limitations against ward, see "Banks and Banking," § 250.

Limitation of actions for relief on ground of fraud, see "Limitation of Actions," §§ 99, 100.

#### Annotation.

Limitation of actions on suits to compel guardian to account or to recover on his bond.—47 L. R. A. (N. S.) 451, note.

(a) Where a guardian, shortly after his ward's minority has ceased, has, by his influence and authority over the ward and by false and fraudulent representations as to its value, induced him to receive in settlement of all sums due him certain shares of stock which afterwards prove worthless and has thereby exacted for himself his formal release from all accountability to his ward, the failure of the ward to file his complaint until two years after the execution of his release is not laches, when, during the two years, the guardian has continued to represent the stock to him as valuable.—*McConkey v. Cockey*, 69 Md. 286, 14 Atl. 465.

(b) The statute of limitations was *held* a bar to an action by a ward against his guardian to recover property of the ward which the guardian was charged with having converted to his own use, and assumed to pay upon the liability resulting from the conversion.—*Green v. Johnson*, 3 G. & J. 389. [Cited and annotated in 47 L. R. A. (N. S.) 451, on limitation of suits to compel accounting by, or to recover on bond of guardian; in 26 L. R. A. (N. S.) 789, on right to maintain action at law against guardian for guardianship funds before settlement of account.]

§§ 126-129. (See Analysis.)

### § 130. Pleading.

(a) As it is the duty of the guardian to take possession of his wards' estate, it is not necessary, in an action for an annuity charged on property devised to the wards, to allege that the guardian had received the rents and profits of their estate.—*Townshend v. Duncan*, 2 Bland 45.

(b) A guardian may be responsible to his ward as bailiff or guardian before he gives bonds; but in such a case the bill should charge an entry on the ward's estate and perception of profits before he bonded. But where the bill is framed in reference to his duty as guardian, deriving his authority as such from his appointment, the account should be taken from the date of his bond.—*Magruder v. Darnall*, 6 Gill 269.

(c) An infant is not bound by the answer of his guardian if he dissent from it within the proper time.—*Prutzman v. Pitesell*, 3 H. & J. 77. [Cited and annotated in 32 L. R. A. 672, on admissions and waivers by fiduciaries in actions.]

### § 131. Evidence.

#### Cross-References.

Burden of establishing agency for guardian, see "Principal and Agent," § 20.

Competency of parties or persons interested to testify against guardian as to transactions with person since deceased or incompetent, see "Witnesses," § 149.

(a) A ward seeking to recover a balance alleged to be due her from her guardian, who sets up in defense a settlement with the ward's husband, authorized and acquiesced in by her, and offers in evidence a receipt in full from the husband, and also a bill of sale from him to the ward, reciting that the consideration thereof is the amount due her from the guardian, has the right to explain by evidence the nature and extent of her knowledge of her legal rights, and to show the circumstances under which the receipt and bill of sale were given, and that she accepted the bill of sale, supposing that it was all she could get.—*Trader v. Lowe*, 45 Md. 1.

(b) An appraisalment of a ward's property, made by order of the Orphans' Court, is not conclusive evidence of the value of such property against the guardian. He may rebut it by proof. Act 1793, c. 101, subc. 12,

§ 6, providing that it shall be evidence against the guardian, does not make it conclusive.—*Magruder v. Darnall*, 6 Gill 269. (See Code 1911, art. 93, § 159.)

(c) Where the issue was whether the guardian had collected and received certain moneys claimed for his ward, the defendant proposed to offer evidence to establish the fact that the guardian had discharged himself by the payment of the amount proved to be in his hands to a successor legally qualified to act. *Held*, that the evidence was foreign to the issue and inadmissible.—*Clarke v. State*, 8 G. & J. 111.

(d) Where plaintiff in ejectment relies on a lease made by a guardian, it is necessary to prove at the trial the legal appointment of the guardian and that the ward was under age when the lease was made.—*Magruder v. Peter*, 4 G. & J. 323.

### § 132. Trial.

### § 133. Judgment.

#### Cross-References.

Conclusiveness, as against ward, of judgment against guardian, see "Judgment," § 692.

Errors and irregularities as ground for equitable relief against judgment, see "Judgment," § 423.

Pleading to sustain default judgment, see "Judgment," § 101.

Vacation of judgment in general, see "Judgment," § 374.

#### Annotation.

Guardian's right to have judgment set aside.—54 L. R. A. 761, note.

### § 134. Execution and enforcement of judgment.

### § 135. Appeal and error.

#### Cross-References.

Exemptions from requirement of security on appeal, see "Appeal and Error," § 374.

Parties required to give bond on appeal from justice's court, see "Justices of the Peace," § 159.

### § 136. Costs.

#### Cross-References.

Costs on accounting, see post, § 162.

Act providing that costs against an infant plaintiff may be enforced by attachment against the guardian as violating constitutional provision prohibiting imprisonment for debt, see "Constitutional Law," § 83.

Right of special guardian to costs, see "Costs," § 82.

## VI. ACCOUNTING AND SETTLEMENT.

### Cross-References.

Accounting and default necessary to liability of sureties on bond, see post, § 179.

By guardian or committee of insane person, see "Insane Persons," § 42.

Discharge of defaulter from imprisonment under insolvent laws, see "Insolvency," § 151.

Lapse of time raising presumption of payment by guardian to ward, see "Payment," § 66.

Liability of estate of deceased husband of guardian for funds of ward, see "Executors and Administrators," § 202.

Mandamus to compel accounting, see "Mandamus," § 4.

Right to jury trial, see "Jury," § 19.

### § 137. Duty to account in general.

(a) Where a ward, 9 years after arriving at majority, petitions to have a guardian's account, filed 17 years before, set aside, and enters a claim for a sum of \$150 earned by his labor during his minority, and collected from his employer by the guardian, this claim was properly rejected upon the testimony of the guardian that he had expended it all on the ward, although he had not accounted in the Orphans' Court for it.—*Morganstern v. Shuster*, 66 Md. 250, 7 Atl. 687.

### § 138. Who entitled to require accounting.

(a) Though an infant himself cannot call his guardian to an account while the relation subsists, but must wait until he attains age, yet a third person may do so, during the minority, for the benefit of the infant, of whose interest the law is especially careful.—*Swan v. Dent*, 2 Md. Ch. 111.

(b) A person may be made to account for the rents and profits of the real estate of a minor, of which he took possession, upon a bill filed by the administrator of the minor.—*Wells v. Beall*, 2 G. & J. 458.

### § 139. Who liable.

#### Cross-Reference.

See ante, § 6.

(a) Parties who take possession of the personal property of infants, and retain and use the same, will be considered in equity as guardians, and liable to account accordingly; and a court of equity has jurisdiction of the case.—*Chaney v. Smallwood*, 1 Gill 367.

(b) Whoever enters upon the estate of an infant is considered in equity as entering as

his guardian, and after the ward comes of age he may by a bill in chancery recover the rents and profits; and, if a person so entering shall continue the possession after the infant comes of age, chancery will decree an account against him as guardian and carry on such account after the infancy is determined.—*Drury v. Conner*, 1 H. & G. 220.

### §§ 140-142. (See Analysis.)

### § 143. Nature and form of proceedings for accounting.

(a) An action of account is the only action at law that can be brought against a guardian, as such, by his ward, except an action on his bond.—*Green v. Johnson*, 3 G. & J. 389.

[Cited and annotated in 47 L. R. A. (N. S.) 451, on limitation of suits to compel accounting by, or to recover on bond of guardian; in 26 L. R. A. (N. S.) 789, on right to maintain action at law against guardian for guardianship funds before settlement of account.]

(b) A bill was filed by the appellee against his guardian, and the sureties in his guardian's bond, for an account, in which it was stated that one of the securities in said bond was insolvent. Held, that, the party had a remedy at law, and the bill was dismissed.—*Lawson v. Davis*, 7 Gill 345. [Cited and annotated in 26 L. R. A. (N. S.) 789, 791, on right to maintain action at law against guardian for guardianship funds before settlement of account.]

### § 144. Jurisdiction of courts.

#### Cross-References.

See ante, § 143.

Conferring jurisdiction by consent, see "Courts," § 24.

(a) The Court of Chancery has authority to interpose in the affairs of infants under the care of guardians under application of their nearest friends, and to require an accounting at the instance of such friends.—*Hepburn v. Hepburn*, 2 Bland 501, note.

### § 145. Proceedings for accounting.

#### Cross-Reference.

Effect of erroneous discharge on action on bond, see "Judgment," § 576.

### § 146. Actions for accounting.

#### Cross-References.

Action to set aside settlement, see post, § 165.

Administrator of guardian as party, see "Executors and Administrators," § 438.

Application of general statute of limitations, see "Limitation of Actions," §§ 18, 21, 39.

Commencement of action as tolling limitations, see "Limitation of Actions," § 127.

Death as suspending limitations, see "Limitation of Actions," § 83.

Existence of trust as affecting limitations, see "Limitation of Actions," § 102.

Limitation of actions for relief on ground of fraud, see "Limitation of Actions," § 100.

(a) A party intruding upon an infant's estate becomes constructively his guardian or trustee, but, against such a trust, limitations run; and, to avoid the bar, the bill for account must be filed within three years after the infant arrives of age.—*Weaver v. Leiman*, 52 Md. 708. [Cited and annotated in 47 L. R. A. (N. S.) 454, on limitation of suits to compel accounting by, or to recover on bond of guardian.]

(b) To any account between the ward and the surety in his guardian's bond, the guardian, or his trustee if he be insolvent, is a necessary party.—*O'Hara v. Shepherd*, 8 Md. Ch. 306. [Cited and annotated in 44 L. R. A. (N. S.) 941, 947, on personal liability of trustee for losses.]

(c) Where the relation of guardian and ward has been terminated by the removal of the former, the infant has the same right to call him to an account as he would have to call his representative to an account in case of his death; and, in the latter case, it has been decided that an infant may sue as if he were of age.—*Swan v. Dent*, 2 Md. Ch. 111.

(d) Where a guardian has been removed by order of the Orphans' Court, the ward may, during his minority, come into court by his next friend, and call such guardian to account.—*Richards v. Swan*, 7 Gill 366.

(e) A guardian executed a conveyance of negroes, by way of indemnity, to a security in his bond, which security bequeathed them to the wards, according to their respective shares and interests in a legacy made to them by their grandmother, and as a full equivalent for the money they were entitled to receive from her. Upon a bill to compel the guardian to account, and for a partition of the negroes, the complainants were held bound to prove the number of wards among whom the property was to be divided,

or interested in the legacy.—*Hilleary v. Hurdle*, 6 Gill 105.

## § 147. Charges.

## § 148. Credits.

### Cross-References.

Allowance and payment of claims, see ante, § 67.

Expenditures, see ante, § 58.

In favor of sureties on bond, see post, § 182.

Reimbursement and indemnity to guardian, see ante, § 68.

## §§ 149-152. Compensation.

(a) A guardian in a trust of considerable duration, who performed his duties, except in a failure regularly to pass accounts, who, however, promptly answered, threw no obstacles in the way of investigation, and rendered a general account in his answer to a bill filed against him is entitled to a commission of 7½ per cent.—*Magruder v. Darnall*, 6 Gill 269.

## §§ 153-157. (See Analysis.)

## § 158. Hearing or reference.

(a) Where an attempt is made to charge a guardian with perception of rents and profits before he bonded, as well as after, and there were no allegations in the bill on the subject of profits before his appointment, that question is not in issue in the cause.—*Magruder v. Darnall*, 6 Gill 269.

## § 159. Order or decree.

## § 160. Opening or vacating.

### Cross-References.

Application of general statute of limitations, see "Limitation of Actions," §§ 39, 100.

Concealment of cause of action as affecting limitations, see "Limitation of Actions," §§ 95, 104.

Pleading limitations, see "Limitation of Actions," § 180.

## § 161. Review.

### Cross-References.

Courts invested with appellate jurisdiction, see "Courts," § 227.

Divorced wife of minor as party aggrieved giving right of review, see "Appeal and Error," § 151.

(a) The Court of Appeals will not reverse a decree settling a guardian's account on the ground of error committed in the mode of averaging proof, when assured that the whole evidence in the cause fully justified

the credits allowed in relation to the subjects affected by such average. — *Magruder v. Darnall*, 6 Gill 269.

### § 162. Costs and expenses.

#### Cross-Reference.

Publication of laws, see "Statutes," § 38.

### § 163. Operation and effect.

#### Cross-References.

Conclusiveness of adjudication as against sureties on bond, see post, § 180.

Lien on guardian's property, see ante, § 74.

(a) The reports required by the court from the trustees of wards in chancery are not binding on the wards as accounts though approved by court. — *Jenkins v. Whyte*, 62 Md. 427.

(b) The accounts of a guardian settled in the Orphans' Court are but prima facie evidence of their correctness. — *State v. Baker*, 8 Md. 44.

(c) The accounts of a guardian, having been passed by the Orphans' Court, and showing an indebtedness to the ward, are, as against a grantee of the guardian claiming under a deed executed by him subsequent to the passage of the accounts, prima facie evidence of such indebtedness. — *McClellan v. Kennedy*, 3 Md. Ch. 234.

(d) An account of a guardian, charging himself with one year's use of the minor's estate and crediting the whole amount of allowances, examined and passed by the Orphans' Court, which appointed him, is a judicial act of that court, and is prima facie evidence of the matters therein contained. It may be impeached by proof. — *Magruder v. Darnall*, 6 Gill 269.

(e) Guardians' accounts, though rendered to court, passed and allowed, are not conclusive upon either the guardian or the ward; but evidence may be given that the accounts were erroneous, or that the court have exceeded their authority, and made improper and unreasonable allowances. — *Speden v. State*, 3 H. & J. 251.

### § 164. Private accounting and settlement.

#### Cross-Reference.

Lapse of time raising presumption of payment by guardian to ward, see "Payment," § 66.

(a) Where a guardian, shortly after his ward's minority has ceased, has, by his influence and authority over his ward, and by false and fraudulent representations as to its value, induced him to receive, in settlement of all sums due him, certain shares of stock which afterwards prove worthless, and has thereby exacted for himself his formal release from all accountability to his ward, such transaction will not be permitted to stand. — *McConkey v. Cockey*, 69 Md. 286, 14 Atl. 465. [Cited and annotated in 47 L. R. A. (N. S.) 459, on limitation of suits to compel accounting by, or to recover on bond of guardian.]

(b) A conveyance of land by a guardian to the husband of his infant ward in payment or satisfaction of an indebtedness of the guardian to the ward, made without her knowledge or consent, and even though made with her knowledge and consent if she is at the time under the disability of coverture, is not binding upon her after her majority, unless acquiesced in by her with a full understanding of her rights, and full knowledge of all the facts and circumstances surrounding the transaction. — *Trader v. Lowe*, 45 Md. 1.

(c) A release by an infant to her guardian, on coming of age, will not discharge from liability a third person holding, as her trustee under a will, funds which were never paid to the guardian. — *Hanson v. Worthington*, 12 Md. 418. [Cited and annotated in 21 L. R. A. 153, on validity of acts under letters probate afterwards revoked or held invalid; in 27 L. R. A. (N. S.) 602, on effect of spouse's election to take against, upon rest of, will.]

(d) Since the passage of the act of 1829, c. 216, § 7, a female 18 years of age may execute a valid release to her former guardian, who had been removed and his place supplied by another. — *McClellan v. Kennedy*, 8 Md. 230. (See Code, art. 79, § 1.)

(e) Settlements between guardian and ward, made soon after the office has terminated, are not favored, because the influence may be supposed still to continue; but this fact alone is not a fatal objection. — *McClellan v. Kennedy*, 8 Md. 230.

(f) A female ward attained the age of 18 on the 9th of March, 1834, and on the 12th of the same month she executed a release to

her former guardian, who had been deposed from his office nearly 9 years before, of all claims she had against him as such guardian. *Held*, that under the act of 1829, c. 216, § 7, which makes releases executed by a female ward of the age of 18 as valid as if she were of full age, she could not afterwards repudiate such release.—*McClellan v. Kennedy*, 3 Md. Ch. 234; *Same v. Same*, 8 Md. 230. (See Code 1911, art. 79, § 1.)

(g) A guardian will not be allowed to account in money for specific property, which came to his hands by intermarriage with the administratrix of the estate from which the property was derived, according to the amount of the inventory.—*Crapster v. Griffith*, 2 Bland 5.

(h) A release by a ward to her guardian on the payment of less than is due her, which is given under a misapprehension as to the value of her estate, will be set aside, and the guardian ordered to account.—*Crapster v. Griffith*, 2 Bland 5.

(i) A release of all claims against a guardian concerning specific personal property is evidence of the delivery of such property to the releasor, his ward.—*Magruder v. Darnall*, 6 Gill 269.

(j) A female under the age of 21 years cannot execute a release to her guardian though she has the capacity to receive payments from him at the age of 16 years.—*Fridge v. State*, 3 G. & J. 103, 20 Am. Dec. 463. (But see Code, art. 79, § 1.)

#### § 165. Actions to open or set aside settlement.

(a) Where an Orphans' Court allows a small balance of \$27.72 remaining in a guardian's hands after payment of costs for support of the ward, upon an account filed during the ward's minority, the allowance will not be disturbed upon proceedings taken by the ward 17 years afterwards, and 9 years after arriving at his majority.—*Morganstern v. Shuster*, 66 Md. 250, 7 Atl. 687.

(b) As a general rule, it is incumbent on the guardian to prove that his settlement with his ward is just and correct; but, where a settlement appears to have been carefully made, and a long time has since elapsed, and the papers have been lost, the burden is on

the ward to show some error, mistake, or fraud.—*Smith v. Davis*, 49 Md. 470.

(c) A settlement in the Orphans' Court is not conclusive in the Court of Chancery; and, where the settlement is contested in the latter, the vouchers of the accountant should be produced.—*Crapster v. Griffith*, 2 Bland 5.

### VII. FOREIGN AND ANCILLARY GUARDIANSHIP.

#### Cross-Reference.

Of insane persons, see "Insane Persons," § 43.

§ 166. Foreign appointment.

§ 167. Ancillary appointment.

§ 168. Custody and disposition of property.

(a) Code 1888, art. 93, § 195, provides that an Orphans' Court of any county or city in which there is property of a nonresident infant having no guardian in Maryland may empower a foreign guardian to sue for and recover the same. Section 196, as amended by act 1890, c. 253, provides that the nonresident guardian of a nonresident infant may obtain an order for a transfer to him of the property of such infant from the hands of a resident guardian. *Held*, that, the Orphans' Court can order the resident guardian to turn over the property of the infant to a foreign guardian subsequently appointed in the state to which such infant has changed his residence.—*Bernard v. Equitable Guarantee & Trust Co.*, 80 Md. 118, 30 Atl. 563. (See Code 1911, art. 93, §§ 196, 197.)

(b) Where the real estate of a nonresident infant is sold under a decree made under Code, art. 16, §§ 36, 37, on the application of a guardian appointed and resident in Maryland, the proceeds thereof will not be transferred to a guardian appointed in the state where the infant resides, since they must be distributed as real estate in case the infant dies intestate.—*Clay v. Brittingham*, 34 Md. 675. (See Code 1911, art. 16, §§ 57, 58.)

(c) A guardian appointed in another state cannot, by virtue of such appointment, exclusively act as guardian in Maryland in respect to property lying in Maryland and under the control of the Orphans' Court.—

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

*Kraft v. Wickey*, 4 G. & J. 332, 23 Am. Dec. 569.

§§ 169-172. (See Analysis.)

### VIII. LIABILITIES ON GUARDIAN-SHIP BONDS.

#### Cross-References.

Effect of discharge of guardian as precluding surety from enforcing indemnifying mortgage, see ante, § 163.

Liability on legal mortgage on tutor's property, see ante, § 74.

Necessity and sufficiency of bonds, see ante, § 15.

Assignment of judgment against guardian as carrying with it the security, see "Judgment," § 844.

Estoppel to deny liability, see "Estoppel," § 18.

Liability of infant surety, see "Infants," § 47.

Liability of surety for interest on penalty, see "Interest," § 46.

Presentation of claim against estate of deceased surety, see "Executors and Administrators," § 225.

Right of guardian to exemption, see "Exemptions," §§ 72, 75.

Subrogation of sureties of guardian, see "Subrogation," § 7.

#### § 173. Nature and extent in general.

##### Annotation.

Penalty as limit of liability on bond.—55 L. R. A. 392, note.

#### § 174. Property covered.

(a) Code 1860, art. 16, §§ 36, 37, provide for the sale of the land of an infant, if the court is satisfied that it will be advantageous to the infant. Section 99 provides that, where lands of an infant "cannot be divided without loss or injury" to the interested parties, a sale may be decreed, and the proceeds divided. A bill was filed by the next friend of infants, alleging that the land was not susceptible of an advantageous partition, and could not be "divided without loss or injury." The evidence was mainly directed towards proving that the land could not be divided without loss. *Held*, that the suit was evidently brought under § 99, and the proceeds came rightfully into the hands of the guardian, for which he would be liable on his bond.—*Benson v. Benson*, 70 Md. 253, 16 Atl. 657. (See Code 1911, art. 16, §§ 57, 58, 137.)

(b) Where an executor whose duty it is to hold the legacy, and account for it to the legatee on his attaining his majority, pays it to the legatee's guardian, the latter's sure-

ties are not liable for the same.—*Hindman v. State*, 61 Md. 471.

(c) Where a guardian illegally sells and transfers property of the ward without a previous order of the Orphans' Court, and converts the proceeds to his own use, it is no answer to an action on the bond by the ward that the sale itself is void and passed no title to the purchasers.—*State v. Bishop*, 24 Md. 310; *State v. Murray*, Id.

(d) An executrix having married, and the personal estate of the testator having come to the hands of her husband, who was appointed guardian of one of the distributees, the husband and his sureties, as guardian, become answerable for the share of such distributee.—*Seegar's Ex'rs v. State*, 6 H. & J. 162, 14 Am. Dec. 265.

#### § 175. Functions and acts covered.

##### Annotation.

Decree directing transfer of fund of guardian to himself in another fiduciary capacity as affecting liability of his sureties.—40 L. R. A. (N. S.) 1136, note.

Liability of sureties on guardian's bond for defalcation prior to the execution thereof.—39 L. R. A. (N. S.) 961, note.

(a) Under Code 1888, art. 81, § 65, which provides that guardians shall pay all taxes on property in their hands as such, the sureties on the bond of a nonresident guardian of a nonresident ward, which bond is conditioned for the performance of his duties, are liable for taxes assessed against the ward's property after he became of age, but before the guardian stated a final account to the Orphans' Court and delivered the property to the ward, though before the commencement of the suit against the sureties to enforce the collection of such taxes the guardian stated a final account in the Orphans' Court, and delivered all the property to the ward, who executed a release to the guardian.—*Baldwin v. State*, 89 Md. 587, 43 Atl. 857. [Affirmed 179 U. S. 220, 21 S. Ct. 105, 45 L. Ed. 160.] (See Code 1911, art. 81, § 70.)

#### § 176. Settlement and discharge of principal.

##### Cross-Reference.

Proceedings for accounting, see ante, § 145.

### § 177. Discharge of sureties.

#### Cross-Reference.

Right to subrogation, see "Subrogation," § 7.

(a) The release from the ward to the guardian being declared void for fraud by a court of equity, the liability of the guardian's sureties remains the same as though the release had never been given.—*Parr v. State*, 71 Md. 220, 17 Atl. 1020. [Cited and annotated in 52 L. R. A. 187, on effect against surety of judgment against officer; in 40 L. R. A. (N. S.) 720, on effect upon surety of judgment against principal.]

(b) Where a guardian was removed, and ordered to pay over the ward's moneys to his successor, and failed to do so, it was no defense to an action on his bond that his successor had charged himself with the fund in the hands of the first guardian, if in fact he never had received it.—*Byrd v. State*, 44 Md. 492.

(c) An Orphans' Court made an order on the application of a guardian, directing him to deposit his ward's money in a designated bank in the ward's name, and subject to the control of the court. The order further directed that, upon producing evidence of the deposit, an account should be prepared by the register, giving credit for the sum so deposited, and that thereupon the guardian should be discharged from liability. The deposit was made, but the account was not prepared. Two months afterwards, the Orphans' Court revoked the first order, and authorized the guardian to withdraw the money from the bank and invest it in his own name as guardian. On the same day, the guardian passed his first and only account, in which he charged himself with these moneys, and soon after became insolvent. Held, that the sureties were not released from liability by the deposit of the money in the bank in pursuance of the first order of the court.—*Griffith v. Parks*, 32 Md. 1.

(d) The sureties in a guardian's bond are not released from their responsibility to the ward where, on their application to the court for counter security, a new bond is executed with other sureties, although the court ordered that such sureties should be released.—*McMath v. State*, 6 H. & J. 98.

(e) A minor of the age of 16 years gave her receipt to her guardian for the full amount of her personal estate, without having received it, but in consideration of her guardian's single bill, payable at a future day, for the amount of her personal estate. Held, that, the guardian's bond was still liable, and that an action might be maintained upon it to recover the value of said estate.—*Bowers' Adm'x v. State*, 7 H. & J. 32. [Cited and annotated in 35 L. R. A. (N. S.) 64, on payment by commercial paper.]

### § 178. Breach or fulfillment of condition.

(a) Where a guardian was removed, and ordered to pay over property in his hands to his successor, on failure so to do his bond at once became liable to suit.—*Byrd v. State*, 44 Md. 492.

### § 179. Necessity of accounting and default by principal.

#### Cross-Reference.

Effect of erroneous discharge, see "Judgment," § 576.

### § 180. Conclusiveness of adjudication against principal.

#### Annotation.

Effect on surety of judgment against principal.—52 L. R. A. 187; 40 L. R. A. (N. S.) 417, notes.

(a) A judgment establishing the liability of the estate of a ward for taxes, in a suit by the guardian to restrain their collection, is res judicata, as to that question, in a subsequent action by the state against the sureties on the guardian's bond to collect the unpaid taxes.—*Baldwin v. State*, 89 Md. 587, 43 Atl. 857. [Affirmed 179 U. S. 220, 21 S. Ct. 105, 45 L. Ed. 160.]

(b) A decree which adjudicates and directs the payment of a certain sum of money by the guardian to the ward is prima facie binding on the guardian's sureties, though they were not made parties to the suit.—*Parr v. State*, 71 Md. 220, 17 Atl. 1020. [Cited and annotated in 52 L. R. A. 187, on effect against surety of judgment against officer; in 40 L. R. A. (N. S.) 720, on effect upon surety of judgment against principal.]

(c) In an action of debt on a guardian's bond in the County Court, accounts passed by the Orphans' Court in favor of the guard-



ian were not conclusive evidence.—*Selby v. Gunby*, 3 H. & J. 277, note.

### § 181. Summary remedies.

(a) The surety on a guardianship bond being dead, his personal estate and a portion of his real estate having been exhausted in the payment of his debts and the residue of his real estate having been sold in a cause pending in court, and the proceeds being in the hands of the trustee, the wards may, if the guardian be insolvent, interpose by petition, in a summary way, to have their claims against the guardian satisfied out of the fund.—*Griffith v. Parks*, 32 Md. 1.

### § 182. Actions.

#### Cross-References.

Joinder of sureties in action to set aside settlement, see ante, § 165.

Action by assignee of judgment against guardian, see "Assignments," § 119.

Change of statute of limitation, see "Limitation of Actions," § 6.

Computation of period of limitation, see "Limitation of Actions," § 47.

Disabilities affecting limitations, see "Limitation of Actions," § 72.

Joinder of causes of action, see "Action," §§ 46, 50.

Limitations applicable, see "Limitation of Actions," § 22.

Multifariousness, see "Equity," § 150.

Remedies of judgment creditor of ward against sureties receiving trust property from guardian as indemnity against judgment, see "Principal and Surety," § 147.

#### Annotation.

Limitation of actions against sureties to recover on guardian's bond.—47 L. R. A. (N. S.) 460, note.

(a) Code 1888, art. 81, § 83, which provides that all taxes levied for county or city purposes shall be collected within four years after the same shall have been levied, and, if not collected within four years, the party from whom such taxes may be demanded may plead the section in bar of any recovery of the same, is not available to the sureties on a guardian's bond, in an action thereon for failure to pay taxes, as they are not parties from whom the taxes may be demanded.—*Baldwin v. State*, 89 Md. 587, 43 Atl. 857. [Affirmed 179 U. S. 220, 21 S. Ct. 105, 45 L. Ed. 160.] (See Code 1911, art. 81, § 88.)

(b) Code 1888, art. 81, § 65, which provides that guardians shall pay all taxes on prop-

erty in their hands as such, and in case of failure to pay the same the guardian's bond shall be put in suit for the use of the state, authorizes a suit on a guardian's bond for failure to pay taxes, in the name of the state for the use of the collector of taxes for the county in which the taxes are levied.—*Baldwin v. State*, 89 Md. 587, 43 Atl. 857. [Affirmed 179 U. S. 220, 21 S. Ct. 105, 45 L. Ed. 160.] (See Code 1911, art. 81, § 70.)

(c) A testator bequeathed to his grandson a certain sum of money, to be paid to him on his majority; the interest in the meantime to be paid to his daughters. No special direction was given by the testator as to who should invest the fund and pay the interest to the daughter. The executors, under an order of the Orphans' Court, paid the legacy to the guardian of the minor legatee, and that guardian, becoming insolvent, was removed and another appointed in his place. *Held*, that, the second guardian could not maintain an action to recover the legacy against the first guardian's surety, since it was no part of his duty to carry out the provisions of the will.—*Hindman v. State*, 61 Md. 471.

(d) One action may be brought in the name of the state for the use of several wards on one bond given by their guardian, under Code 1860, art. 93, § 156, which provides that a bond given by a guardian, where there are several wards entitled to portions of the same estate, shall be liable to suit by all or either of the wards named therein.—*Walsh v. State*, 53 Md. 539. (See Code 1911, art. 93, § 156.)

(e) In an action against C. and his two sureties, T. and S., on a guardian's bond, a declaration filed with the bond alleged the execution of the bond by T. and S., and their failure to pay the amount thereof. The defense pleaded general performance on the part of C., to which the plaintiff filed a replication, setting out the names of the obligors in the bond with particularity and alleging the death of C. *Held*, that, such a replication could not be considered as a departure from the declaration.—*Trippe v. State*, 46 Md. 512.

(f) In an action on a guardian's bond for a failure to account, an allegation of demand

and of default of payment is sufficient without averring that the ward had become of age before the suit was brought, or that the guardian had first been sued; or was insolvent.—*Trippe v. State*, 46 Md. 512.

(g) Act 1864, c. 6, § 5, practice act applicable to Baltimore city, provides that judgment by default may be taken if the defendant fails to appear; but by § 8, the plaintiff is not entitled to judgment unless, at the commencement of the action, he files an affidavit stating the true amount of the defendant's indebtedness to him, and also files the instrument or account on which the indebtedness rests. *Held*, that a suit upon a guardian's bond with collateral condition, on which sureties are made responsible only for default of their principal in discharge of official duty, is not within either the letter or spirit of the act.—*State v. Steibel*, 31 Md. 34. (See Balto. City Rev. Charter, §§ 312, 313.)

(h) Where a guardian illegally sells the stock of an incorporated company, which was the property of his ward, without the previous order of the Orphans' Court, and converts the proceeds to his own use, though the value of the stock has been actually restored to the ward by the corporation, this does not defeat an action on the guardian's bond, but it will reduce the right of plaintiff to the recovery of nominal damages only.—*State v. Bishop*, 24 Md. 310, 87 Am. Dec. 608; *State v. Murray*, Id.

(i) Where a guardian has illegally sold and transferred the property of the ward, contrary to the act of Assembly, without a previous order of the Orphans' Court, and converted the proceeds to his own use, it is no answer to an action on the bond by the ward, that, under the act, the sale itself was void and passed no title to the purchasers.—*State v. Bishop*, 24 Md. 310, 87 Am. Dec. 608; *State v. Murray*, Id.

(j) After a ward has recovered from an incorporated company the value of shares of stock thereof illegally transferred and misappropriated by the guardian, the measure of damages, in an action by the ward upon the guardian's bond, is the loss actually suffered from the breach of the condition of the

bond.—*State v. Bishop*, 24 Md. 310, 87 Am. Dec. 608; *State v. Murray*, Id.

(k) Where the Orphans' Court appoints a person guardian expressly upon the ground that he agree not to receive any allowance for the support of the ward, the ward may claim the benefit of such an agreement in an action on the guardian's bond.—*State v. Baker*, 8 Md. 44.

(l) An action upon a guardian's bond was sustained against the surety, though the principal, residing in the same county, had not been sued.—*Jarrett v. State*, 5 G. & J. 27.

(m) A suit may be sustained upon a guardian's bond for not delivering up the property of the ward, though no order has been made by the court to that effect.—*Jarrett v. State*, 5 G. & J. 27.

(n) Where the plea of limitations to an action on a guardian's bond was "that the debt in the condition of the writing obligatory, aforesaid mentioned, hath been standing, and in action, above 12 years," and it appeared, by inspection of the bond, that no debt was mentioned in the condition or demurrer, the plea was ruled defective and inapplicable.—*State v. Green*, 4 G. & J. 381.

(o) Where the condition of a guardian's bond recited that A. was guardian, etc., and he obtained possession of the property of the ward named therein, neither the principal obligor nor the surety, in an action on such bond, can deny that he was guardian, in the face of such recital, nor set up as a defense any supposed irregularity in obtaining his appointment.—*Fridge v. State*, 3 G. & J. 103, 20 Am. Dec. 463.

(p) The appointment of the Orphans' Court of a person as guardian, who at the time was one of the judges of the court, cannot be afterwards questioned in an action on his bond, though, at the time of his appointment, the court could not have acted without the concurrence of the appointee.—*Fridge v. State*, 3 G. & J. 103, 20 Am. Dec. 463.

(q) In an action on the bond of a guardian appointed by the Orphans' Court, and brought for the use of his ward, the mere fact that a natural guardian was in existence at the time of the guardian's appoint-

ment does not invalidate the appointment, so as to render the bond a nullity.—*Fridge v. State*, 3 G. & J. 103, 20 Am. Dec. 463.

(r) In an action, in the name of the state, against the obligee in a guardian's bond, the nonage of the ward, who was more than 16, was held no defense, and not the fit subject for a plea.—*Fridge v. State*, 3 G. & J. 103, 20 Am. Dec. 463.

(s) In an action of debt upon a guardian's bond, dated in 1797, the plaintiff proved, by a witness, that land of the plaintiff was, during his minority, rented by the guardian to the witness in 1791, and that the rent was afterwards lessened in consequence of an agreement between them that the witness should take charge of the defendant's stock on the land. Held, that, such evidence was inadmissible.—*Gunby v. Selby*, 2 H. & J. 244.

### GUARD RAILS.

#### Cross-Reference.

On bridges, see "Bridges," § 38.

### GUARDS.\*

#### Cross-References.

At crossings of tracks, see "Street Railroads," § 41.  
At railroad crossings, see "Railroads," §§ 103, 306-308, 412, 413.  
For accused during trial, see "Criminal Law," § 637.  
For dangerous machinery or places, see "Master and Servant," §§ 121, 185, 217, 219, 236.  
For dangerous places in streets, see "Municipal Corporations," §§ 796-798.  
Of county jail, see "Prisons," § 9.  
Of penitentiary, see "Prisons," § 8.

### GUESTS.\*

#### Cross-Reference.

See "Innkeepers."

### GUIDEBOARDS.

#### Cross-Reference.

Penalty for neglect of town to keep in repair, notice as condition precedent to action, see "Towns," § 69.

### GUIDEPOSTS.

#### Cross-Reference.

Erection on highway, see "Highways," § 105.

### GUILTY.\*

#### Cross-References.

Plea as conviction constituting former jeopardy, see "Criminal Law," § 179.  
Plea in criminal prosecution, see "Criminal Law," §§ 272-274.  
Sentence on plea, see "Criminal Law," § 980.

### GUN.\*

#### Cross-References.

See "Weapons."  
Assault with gun, see "Assault and Battery," §§ 2, 53, 54, 56, 57.  
Homicide with, see "Homicide," §§ 16, 59, 90.

### GUNPOWDER.\*

#### Cross-References.

See "Explosives."  
Keeping of, prohibited in insurance policy, see "Insurance," § 326.

### GUTTERS.\*

#### Cross-References.

See "Drains"; "Highways," § 120; "Municipal Corporations," §§ 270, 388, 417, 708-715, 827-846; "Waters and Water Courses," §§ 119, 121.  
Obstruction by adjoining landowner, see "Adjoining Landowners," § 6.

## HABEAS CORPUS.\*

### Scope-Note.

[INCLUDES writs of habeas corpus commanding the production of a person detained by another, with the cause of such detention, for determination thereof; nature and scope of the remedy in general; grounds of such writs; to and against whom and for what restraint they are allowed; jurisdiction to grant and proceedings to obtain the writ; issuance, requisites, and validity of writs; service thereof, return thereto, and proceedings thereon; writs of certiorari in aid of writs of habeas corpus, and other incidental relief; judgments or orders and enforcement thereof; review of proceedings; costs in habeas corpus proceedings; disobedience to such writs; and suspension of the remedy.

\*Annotation: Words and Phrases, same title.

[EXCLUDES writs of habeas corpus for production of prisoners to testify as witnesses (see "*Witnesses*"), and for special purposes other than deliverance from restraint (see specific heads).

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

**I. Nature and Grounds of Remedy.**

- § 1. Nature and scope in general.
- § 2. Constitutional and statutory provisions.
- § 3. Existence of other remedy in general.
- § 4. Existence of remedy by appeal or writ of error.
- § 5. Effectiveness of remedy by habeas corpus.
- § 6. Discretion as to grant of writ.
- § 7. Successive writs or proceedings.
- § 8. Nature of restraint or detention.
- § 9. — In general.
- § 10. — Actual imprisonment.
- § 11. — Voluntary surrender or remaining in custody.
- § 12. Nature of authority for restraint or detention.
- § 13. — In general.
- § 14. — Personal relations or authority.
- § 15. — Legislative authority.
- § 16. — Military authority.
- § 17. — Judicial process or order.
- § 18. Proceedings reviewable.
- § 19. — In general.
- § 20. — Civil actions and proceedings.
- § 21. — Arrest and commitment on criminal charges.
- § 22. — Final judgment, sentence, and commitment.
- § 23. — Administrative proceedings.
- § 24. Grounds for relief.
- § 25. — In general.
- § 26. — Want of authority.
- § 27. — Want of jurisdiction.
- § 28. — Excess of jurisdiction.
- § 29. — Invalidity of proceedings.
- § 30. — Errors and irregularities.
- § 31. — Former jeopardy.
- § 32. — Invalidity of statute or ordinance.
- § 33. — Admission to or reduction of bail.
- § 34. Defenses.
- § 38. Persons entitled to relief.
- § 39. Writ de homine replegiando.

**II. Jurisdiction, Proceedings, and Relief.**

- § 40. Jurisdiction in general.
- § 41. — Nature and extent.
- § 42. — Authority of state courts in respect to persons in custody of United States authorities.

**II. Jurisdiction, Proceedings, and Relief—Continued.**

- § 43. — Courts of special or limited jurisdiction.
- § 44. — Courts of appellate jurisdiction.
- § 45. — United States courts.
- § 46. — Particular courts.
- § 47. — Authority of judges and judicial officers.
- § 48. Jurisdiction of parties.
- § 49. Waiver of objection to jurisdiction.
- § 50. Time for application.
- § 51. Parties.
- § 52. Petition.
- § 53. — Form and requisites in general.
- § 54. — Particular averments.
- § 55. — Copies of process or proceedings authorizing imprisonment.
- § 56. — Demurrer and amendment.
- § 57. — Verification.
- § 58. Notice of application or rule to show cause.
- § 59. Hearing on petition.
- § 60. Allowance and issuance of writ.
- § 61. — Necessity and duty in general.
- § 62. — Grant or refusal.
- § 63. — Compelling allowance.
- § 64. — Penalties for refusal.
- § 65. Form and requisites of writ.
- § 66. Certiorari incident to writ.
- § 67. Service of writ or notice of proceedings.
- § 68. Penalties for refusal to accept service.
- § 69. Operation and effect of writ.
- § 70. — Supersedeas or stay of proceedings.
- § 71. — Custody of prisoner.
- § 72. Quashing or vacating writ.
- § 73. Return.
- § 73½. — Necessity and duty to make in general.
- § 74. — Mode and form.
- § 75. — Requisites and sufficiency in general.
- § 76. — Cause or authority for restraint or detention.
- § 77. — Copies of process or proceedings authorizing imprisonment.
- § 78. — Verification.
- § 79. — Conclusiveness and effect.
- § 80. — Defects, objections, and amendment.
- § 81. — Punishment for failure to make return.
- § 82. Production of person on return.
- § 83. Answer to return and issues thereon.
- § 84. Demurrer or exception to return or to answer.
- § 85. Evidence.
- § 86. Dismissal on return.
- § 87. — Legal custody in general.
- § 88. — Imprisonment under valid process or judgment.

**II. Jurisdiction, Proceedings, and Relief—Continued.**

- § 89. — Release from custody.
- § 90. Hearing on writ and return.
- § 91. Scope of inquiry and powers of court.
- § 92. — In general.
- § 93. — Personal relations or authority.
- § 94. — Jurisdictional questions.
- § 95. — Validity of proceedings.
- § 96. — Errors and irregularities.
- § 97. — Cause of detention existing at time of hearing.
- § 98. Determination of particular issues or questions.
- § 99. — Custody of infants.
- § 100. — Custody of insane persons.
- § 101. — Arrest in civil actions and proceedings.
- § 102. — Arrest and commitment on criminal charges before indictment.
- § 103. — Extradition.
- § 104. — Commitment on indictment.
- § 105. — Final judgment, sentence, and commitment.
- § 106. — Commitment for contempt.
- § 107. — Admission to or reduction of bail.
- § 108. Disposition of person.
- § 109. — Remand or recommitment.
- § 110. — Admission to bail.
- § 111. — Discharge.
- § 112. Judgment or order.
- § 113. Appeal and error.
- § 114. Certiorari to review proceedings.
- § 115. Habeas corpus to review proceedings.
- § 116. Costs.
- § 117. Operation and effect of determination in general.
- § 118. Operation and effect of refusal to discharge.
- § 119. — In general.
- § 120. — Subsequent applications.

**III. Suspension of Remedy.**

- § 121. Power to suspend in general.
- § 122. Constitutional and statutory provisions.
- § 123. Operation and effect of suspension.

*Cross-References.*

Ad testificandum, see "Witnesses," § 18.  
 Appearance as waiver of service of process on Sunday, see "Appearance," § 24.  
 Application to habeas corpus proceedings of statute precluding private counsel for state in criminal prosecutions without special appointment, see "Criminal Law," § 640.  
 As affecting execution of sentence in criminal prosecution, see "Criminal Law," § 1002.

Discharge by state court of a writ of habeas corpus as denial of due process of law, see "Constitutional Law," § 306.  
 Discharge on habeas corpus as termination of prosecution maliciously instituted, see "Malicious Prosecution," § 35.  
 Distinguished from certiorari, see "Certiorari," § 1.  
 For production of accused at trial, see "Criminal Law," § 243.

For transfer of civil cause from one court to another, see "Courts," § 487.

Interference by United States courts with Indian courts, see "Indians," § 38.

Interference with execution of writ as contempt, see "Contempt," § 17.

Pleading discharge in action for malicious prosecution, see "Malicious Prosecution," § 51.

Power of bankruptcy court to discharge bankrupt from arrest or imprisonment on process of state court, see "Bankruptcy," § 393.

Power of Legislature to deprive Supreme Court of right to issue writ of habeas corpus, see "Constitutional Law," § 322.

Release on habeas corpus as adjudication of illegality of arrest, see "False Imprisonment," § 7.

Release on habeas corpus as adjudication that detention constituted illegal imprisonment, see "False Imprisonment," § 8.

Right of Indian ward of United States to maintain habeas corpus for custody of child, see "Indians," § 6.

Right to jury trial, see "Jury," § 19.

Taking child from custody of defendants or out of jurisdiction of court as constituting contempt, see "Contempt," § 15.

## I. NATURE AND GROUNDS OF REMEDY.

### § 1. Nature and scope in general.

#### Annotation.

Habeas corpus to procure release of one committed to insane asylum upon acquittal on ground of insanity.—36 L. R. A. (N. S.) 578, note.

Right to habeas corpus in case of bail, parole, or voluntary surrender.—35 L. R. A. (N. S.) 882, note.

Right of person wrongfully brought into jurisdiction to be released on habeas corpus.—12 L. R. A. (N. S.) 225, note.

Right of stranger to writ of habeas corpus.—9 L. R. A. (N. S.) 1173, note.

### § 2. Constitutional and statutory provisions.

(a) A writ of habeas corpus is a common-law writ, having for its great object the liberation of persons imprisoned without sufficient cause; and the provisions of Code 1860, art. 43, relating thereto, were enacted for the purpose of enforcing the common law, and of securing to citizens the benefit for which the writ was given.—*Deckard v. State*, 38 Md. 186. (See Code 1911, art. 42, §§ 1, et seq.)

### § 3. Existence of other remedy in general.

### § 4. Existence of remedy by appeal or writ of error.

(a) The appellate power conferred upon the Court of Common Pleas to revise the judgments of justices of the peace does not authorize that court to do so on habeas corpus; for, where a judgment is liable to be reviewed by an appeal from it, the writ of habeas corpus cannot be applied.—*State v. Mace*, 5 Md. 337.

§§ 5-17. (See Analysis.)

## §§ 18-23. Proceedings reviewable.

#### Annotation.

Right of minor unlawfully enlisted in Army or Navy to discharge on habeas corpus from custody of court-martial under charge of desertion or fraudulent enlistment.—18 L. R. A. (N. S.) 956, note.

Habeas corpus to review commitment of witness by magistrate for contempt.—1 L. R. A. (N. S.) 1142, note.

(a) A judgment finding a party guilty of contempt of court cannot be impeached on habeas corpus.—*Ex parte Maulsby*, 13 Md. 625, Append.

(b) The action of a court having jurisdiction in a matter of contempt, the commitment being in due form, cannot be reviewed on a hearing on habeas corpus in the Court of Appeals.—*Ex parte Maulsby*, 13 Md. 625, Append.

(c) A summary judgment for contempt is as conclusive on habeas corpus as a sentence on an indictment.—*Ex parte Malsby*, 13 Md. 625, Append.

## §§ 24-33. Grounds for relief.

#### Annotation.

Designation of wrong place of imprisonment as ground for discharge upon habeas corpus.—13 L. R. A. (N. S.) 518, note.

Will habeas corpus lie to release one convicted after wrongful refusal to change venue.—25 L. R. A. (N. S.) 483, note.

Right to have claim of former jeopardy determined in habeas corpus proceeding.—15 L. R. A. (N. S.) 227, note.

Right of person wrongfully brought into jurisdiction to be released on habeas corpus.—12 L. R. A. (N. S.) 225, note.

Discharge on habeas corpus for excessive sentence.—45 L. R. A. 144, note.

(a) Mere errors or irregularities, which only render the proceeding voidable, are not

grounds for relief on writ of habeas corpus.—*In re Glenn*, 54 Md. 572; *State v. Glenn*, Id.

(b) A party in custody upon a writ of ca. sa., issued upon a judgment rendered by a justice of the peace upon a subject-matter within his jurisdiction, cannot be discharged from such custody upon writ of habeas corpus, although the judgment may be erroneous.—*Bell v. State*, 4 Gill 301, 45 Am. Dec. 130.

(c) On refusal of the County Court to obey, on suggestion to the Provincial Court, a writ of habeas corpus, it will be summoned to appear and answer for contempt.—*Taylor v. Llewellyn*, 1 H. & McH. 19.

#### § 34. Defenses.

§§ 35-37. (Omitted from the classification used herein.)

#### § 38. Persons entitled to relief.

#### § 39. Writ de homine replegiando.

(a) A writ de homine replegiando cannot legally issue from any of the courts of law of the state.—*Johnson v. Medtart*, 4 H. & J. 24.

## II. JURISDICTION, PROCEEDINGS, AND RELIEF.

#### Cross-References.

Following procedure and practice of state courts in federal courts, see "Courts," § 334.

New trial in habeas corpus proceedings, see "New Trial," § 2.

Transfer of cause from one state court to another, see "Courts," § 486.

#### §§ 40-47. Jurisdiction in general.

(a) Const. art. 4, § 14, provides that the jurisdiction of the "Court of Appeals shall be coextensive with the limits of the state, and such as now is, or may hereafter be, prescribed by law." *Held*, that, as the court had, at the adoption of the constitution, appellate jurisdiction only, the Legislature had no power to confer original jurisdiction in habeas corpus cases.—*Sevinsky v. Wagus*, 76 Md. 335, 25 Atl. 468.

(b) Const. art. 4, § 6, which provides that "all judges shall, by virtue of their offices, be conservators of the peace throughout the state," does not confer jurisdiction upon the Court of Appeals in habeas corpus cases.—*Sevinsky v. Wagus*, 76 Md. 335, 25 Atl. 468.

(c) Act 1880, c. 6, § 1, restricting the power of the judges of the several courts of the state in cases of habeas corpus, is nugatory and without effect. A judge of the Circuit Court has jurisdiction to grant the writ, though directed to the superintendent of a prison beyond the limits of his circuit.—*In re Glenn*, 54 Md. 572; *State v. Glenn*, Id. (See Code, art. 42, § 1.)

(d) The summary appeal by way of habeas corpus, authorized by act 1874, c. 233, § 12, cannot be taken to a judge or court beyond the limits of the county or city in which the original conviction was had.—*In re Glenn*, 54 Md. 572; *State v. Glenn*, Id. (See Code 1911, art. 42, § 3; Id. [vol. 3], art. 27, § 535; act 1916, c. 556, p. 1137 repealing § 535.)

(e) The doctrine that, where a special limited jurisdiction is conferred by the statute on any tribunal, its power to act must appear on the face of the proceeding, does not apply to proceedings on a writ of habeas corpus.—*Deckard v. State*, 38 Md. 186.

(f) If a party is brought before a Circuit Court of one county on habeas corpus to be discharged from illegal arrest, and it appears that the imputed offense was committed in another county, he may be recognized to appear before the court having jurisdiction of the offense.—*Parrish v. State*, 14 Md. 238.

(g) The Court of Appeals is without jurisdiction to issue a writ of habeas corpus, but the individual judges of such court may grant the writ during the vacation of the circuit courts.—*Ex parte O'Neill*, 8 Md. 227.

(h) The Court of Appeals has no original jurisdiction in cases of habeas corpus.—*Ex parte O'Neill*, 8 Md. 227.

(i) Plaintiff in error gave a bond for the removal of a judgment to the Court of Appeals, but, the bond not being in double the amount of the debt recovered, the defendant in error sued out execution ca. sa. under which the plaintiff in error was taken in execution. *Held*, that, a writ of habeas corpus could not issue from the Court of Appeals.—*Norwood v. Martin*, 3 H. & J. 199.

#### § 48. Jurisdiction of parties.

§§ 49-65. (See Analysis.)



**§ 66. Certiorari incident to writ.**

(a) In order to remove a record of conviction before an inferior tribunal to be examined by a judge or court hearing a case on habeas corpus, it is necessary that such record be produced by certiorari to such inferior tribunal, to be issued and executed within the jurisdiction of such judge or court.—*In re Glenn*, 54 Md. 572; *State v. Glenn*, Id.

**§ 67. Service of writ or notice of proceedings.***Cross-Reference.*

Service on Sunday, see "Sunday," § 30.

**§§ 68-84. (See Analysis.)****§ 85. Evidence.***Cross-References.*

Evidence on hearing of writ of habeas corpus as evidence on trial of criminal prosecution, see "Criminal Law," § 543. Opinion evidence in habeas corpus proceedings, see "Criminal Law," § 448.

Use in other proceedings of confessions made in habeas corpus proceedings, see "Criminal Law," § 536.

**§§ 86-90. (See Analysis.)****§§ 91-97. Scope of inquiry and powers of court.***Cross-Reference.*

Collateral attack on title to office of justice of the peace, see "Justices of the Peace," § 11.

*Annotation.*

Right to review of order in habeas corpus discharging or remanding party held for extradition.—34 L. R. A. (N. S.) 755, note.

Habeas corpus to review extradition proceedings; right to be heard on merits of the charge against accused.—21 L. R. A. (N. S.) 939, note.

(a) On habeas corpus, if the grounds of contempt are not set out in the commitment, the court cannot inquire into them.—*Ex parte Maulsby*, 13 Md. 625, Append.

**§§ 98-107. Determination of particular issues or questions.**

(a) Where the grounds of the contempt are not set out in the commitment, the court on habeas corpus is precluded from inquiring into them.—*Ex parte Maulsby*, 13 Md. 625, Append.

**§§ 108-112. (See Analysis.)****§ 113. Appeal and error.***Cross-References.*

Appellate jurisdiction as dependent on amount or value in controversy, see "Courts," § 222.

Courts invested with appellate jurisdiction, see "Courts," §§ 213, 247.

Jurisdiction of United States Supreme Court to review decisions of Supreme Court of New Mexico, see "Courts," § 387.

Jurisdiction of United States Supreme Court where construction of treaty is involved, see "Courts," § 385.

Review by United States Supreme Court of decision of state court dependent on finality of determination, see "Courts," § 393.

Review by United States Supreme Court of decision of territorial supreme court, see "Courts," § 387.

Security for costs, see "Costs," § 246.

*Annotation.*

Effect of appeal as stay of judgment in habeas corpus proceeding.—2 L. R. A. (N. S.) 244, note.

(a) The refusal of the lower court to quash a writ of habeas corpus is not a final judgment, and cannot be reviewed on appeal or error.—*Rigor v. State*, 101 Md. 465, 61 Atl. 631. [Cited and annotated in 7 L. R. A. (N. S.) 125, on cumulative sentences; in 41 L. R. A. (N. S.) 1096, on right to try one undergoing imprisonment for another offense.]

(b) Act 1892, c. 77, providing for bills of exceptions and appeals from judgment in criminal proceedings, does not authorize an appeal from an order in habeas corpus proceedings.—*City of Annapolis v. Howard*, 80 Md. 244, 30 Atl. 910. (See Code 1911, art. 5, § 80.)

(c) Act 1880, c. 6, § 17, provides that, when a judge has discharged a prisoner on habeas corpus, etc., he shall reduce his opinion to writing, and transmit the original papers, together with a copy of the order of discharge, etc., to the clerk of the Court of Appeals, etc. Held, competent for the Legislature to pass, and that the direction to transmit the proceedings must be taken in lieu of the formal entry of an appeal.—*In re Glenn*, 54 Md. 572; *State v. Glenn*, Id. (See Code 1911, art. 42, §§ 3, 17.)

(d) The decisions of the Baltimore City Court on application for a writ of habeas corpus are reviewable by the Court of Appeals.—*Roth v. House of Refuge*, 31 Md. 329.

(e) A decision on habeas corpus cannot be reviewed by writ of error.—*Coston v. Coston*, 25 Md. 500; *State v. Boyle*, Id. 509.

(f) An appeal or writ of error does not lie to review an order on habeas corpus.—*Bell v. State*, 4 Gill 301, 45 Am. Dec. 130; *Ex parte Coston*, 23 Md. 271.

(g) An appeal from a judgment of the County Court, overruling a motion for a discharge from custody upon the return of a habeas corpus, is not an appeal from a judgment or determination of that court in a civil suit or action within the contemplation of act 1875, c. 87, and cannot be sustained.—*Bell v. State*, 4 Gill 301, 45 Am. Dec. 130. (See Code 1911, art. 5, § 2; Id. [vol. 3], art. 5, § 2.)

§§ 114-120. (See Analysis.)

### III. SUSPENSION OF REMEDY.

#### Annotation.

Continuance of constitutional guaranties during war or insurrection.—45 L. R. A. (N. S.) 996, note.

Power to suspend writ of habeas corpus; who may suspend.—45 L. R. A. 832.

Extent and effect of suspension of writ of habeas corpus.—45 L. R. A. 834, note.

§§ 121-123. (See Analysis.)

### HABENDUM.\*

#### Cross-Reference.

Clause in deed, see "Deeds," §§ 120-136.

### HABERE FACIAS POSSESSIONEM.

#### Cross-Reference.

See "Ejectment," § 120.

### HABITABLE REPAIR.\*

#### Cross-Reference.

Of leased premises, see "Landlord and Tenant," § 125.

### HABITATION.\*

#### Cross-References.

See "Domicile"; "Homestead."

Defense of as defense to charge of assault with intent to kill, see "Homicide," § 98.

Homicide in defense of habitation, see "Homicide," § 123.

### HABIT FORMING DRUGS.

#### Cross-Reference.

See "Poisons," § 2.

### HABITS.\*

#### Cross-References.

See "Customs and Usages."

Evidence of similar acts or transactions showing system or habit, see "Criminal Law," § 372; "Evidence," § 138.

Evidence of vicious habits of animals, see "Animals," § 85.

Evidence to impeach witness, see "Witnesses," §§ 339-341.

Of drunkenness ground for divorce, see "Divorce," § 22.

Of fellow servant, see "Master and Servant," § 174.

Of person insured, affecting validity of policy, see "Insurance," §§ 297, 341, 442.

### HABITUAL CRIMINALS.\*

#### Cross-Reference.

See "Criminal Law," §§ 1200-1204.

### HABITUAL DRUNKARDS.\*

#### Cross-Reference.

See "Drunkards."

### HACKMEN.

#### Cross-Reference.

Grant of exclusive privileges to, by carriers, see "Carriers," § 14.

### HAIL INSURANCE.

#### Cross-Reference.

Risk and cause of loss within insurance policy, see "Insurance," § 423.

### HALF BLOOD.\*

#### Cross-References.

Right of inheritance, see "Descent and Distribution," § 35.

Right to take under provision in will for children, see "Wills."

### HALF HOLIDAY.

#### Cross-Reference.

See "Holidays," § 2.

### HALF PILOTAGE.

#### Cross-Reference.

See "Pilots," § 11.

### HALLUCINATION.\*

#### Cross-References.

Affecting capacity to commit crime, see "Criminal Law," § 49.

Affecting capacity to make will, see "Wills," § 38.

### HALLWAYS.

#### Cross-Reference.

Liability of landlord for injuries from unlighted passageways, see "Landlord and Tenant," §§ 164, 165, 167.

### HAMLETS.\*

#### Cross-Reference.

See "Municipal Corporations."

### HAND CARS.\*

#### Cross-Reference.

Liability of master for injury to servant from defects, see "Master and Servant," §§ 111, 123.

\*Annotation: Words and Phrases, same title.

**HANDCUFFS.***Cross-References.*

See "Arrest," § 70; "Criminal Law," § 637.

**HANDHOLD.\****Cross-Reference.*

Liability of master for injury to servant from absence of, or defects in, see "Master and Servant," §§ 106, 111, 124, 125, 128, 210, 217, 221, 235, 240, 247.

**HANDWRITING.\****Cross-References.*

Comparison as infringement of right to jury trial, see "Jury," § 34.  
Comparison by jury, see "Criminal Law," § 404; "Evidence," §§ 196-198.  
Comparison by witnesses, see "Criminal Law," § 491; "Evidence," §§ 561-567.  
Comparison of handwriting on appeal in admiralty causes, see "Admiralty," § 117.  
Of testator and subscribing witnesses, see "Wills," §§ 132, 295, 304.  
Opinion evidence, see "Criminal Law," §§ 458, 472, 478, 483, 486; "Evidence," §§ 471, 474, 480, 511, 568, 573.  
Photographs of as evidence in criminal prosecution, see "Criminal Law," § 438.  
Proof of handwriting as preliminary to introduction of writing in evidence, see "Evidence," § 375.  
Proof of handwriting of grantors in deed, see "Acknowledgment," § 27.  
Proof of, in actions by or against representatives of decedent, see "Witnesses," § 164.  
Submission in evidence of writings for purpose of comparison, see "Criminal Law," § 404.

**HANGING.***Cross-Reference.*

Punishment of crime, see "Criminal Law," § 1219.

**HAPPINESS.\****Cross-Reference.*

Constitutional right to pursuit, see "Constitutional Law," § 86.

**HARBOR COMMISSIONERS.***Cross-References.*

See "Shipping," §§ 4, 15; "Wharves," § 12.

**HARBORING.\****Cross-References.*

Apprentice, see "Apprentices," §§ 21, 22.  
Female, see "Abduction."  
Husband or wife, see "Husband and Wife," §§ 322-337.  
Servant, see "Master and Servant," § 339.

**HARBOR MASTER.***Cross-References.*

See "Shipping," §§ 4, 15.  
Abolition of office, see "Officers," § 4.

**HARBORS.\****Cross-References.*

See "Municipal Corporations," § 719;  
"Navigable Waters," § 14; "Wharves."  
Collisions between vessels, see "Collision," §§ 86-105.  
Subjects of interstate commerce regulation, see "Commerce," § 24.

**HARD LABOR.\****Cross-References.*

Punishment for crime, see "Criminal Law," §§ 1208, 1213, 1217.  
Regulation of convict labor, see "Convicts," §§ 7-10, 12, 13.

**HARMLESS ERROR.***Cross-References.*

In civil actions, see "Appeal and Error," §§ 1025-1074; "Justices of the Peace," §§ 183, 208; "New Trial," §§ 27, 32, 41, 56.  
In cross-examining codefendant in civil action for assault, see "Assault and Battery," § 45.  
In criminal prosecutions, see "Criminal Law," §§ 918, 921, 922, 932, 1162-1177.  
In instructions as to measure of damages, see "Assumpsit, Action of," § 26.  
Omission to give notice of rendition of award, see "Arbitration and Award," § 73.  
Right of appellant or plaintiff in error to rely on order prejudicial only to others, see "Appeal and Error," § 877.  
Submission of question in absence of evidence relating thereto, see "Assignments for Benefit of Creditors," § 281.

**HARTER ACT.***Cross-References.*

Limitation of liability for collision, see "Collision," § 26.  
Limitation of liability for loss or injury in general, see "Shipping," §§ 134-138, 166, 167, 190, 200.

**HARVESTER.***Cross-Reference.*

Exemption of, as tool or implement of trade, see "Exemptions," § 45.

**HASTE.***Cross-Reference.*

Undue haste in trial of accused, see "Criminal Law," § 575.

**HAWAII.***Cross-References.*

Cause of action for wrongful death, see "Death," § 9.  
Decisions of Hawaiian courts as authority in state courts, see "Courts," § 98.  
Power to tax, see "Taxation," § 19.

\*Annotation: Words and Phrases, same title.

## HAWKERS AND PEDDLERS.\*

*Scope-Note.*

[INCLUDES the regulation of persons going from place to place selling or exchanging goods which they carry with them or themselves deliver.

[EXCLUDES sales by traveling salesmen (see "*Principal and Agent*"; "*Sales*"); and regulation of commerce (see "*Commerce*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Power to regulate.
- § 2. Statutory and municipal regulations.
- § 3. Who are hawkers or peddlers.
- § 4. Licenses and taxes.
- § 5. Validity of sales.
- § 6. Penalties for violations of regulations.
- § 7. Offenses.

*Cross-References.*

Class legislation, see "Constitutional Law," § 208.

Constitutionality and validity of acts and ordinances imposing license taxes in general, see "Licenses," § 7.

Construction of statute relating to regulation of hawkers and peddlers as encroachment on legislature, see "Constitutional Law," § 70.

Delegation of power to impose license taxes to municipalities, see "Licenses," § 6.

Denial of equal protection of laws, see "Constitutional Law," § 230.

Effect of partial invalidity of ordinance regulating hawkers and peddlers, see "Municipal Corporations," § 111.

Grant of special privileges, see "Constitutional Law," § 205.

Issuance of licenses to corporations, see "Corporations," § 383.

Nature of license fee or tax, see "Licenses," § 1.

Ordinance prohibiting peddling without license as deprivation of liberty to choose

occupation, see "Constitutional Law," § 88.

Peddlers' notes, see "Bills and Notes," §§ 106, 107.

Peddling patent rights, see "Patents," § 221.

Power of federal court to restrain enforcement of ordinance prohibiting nonresident hawkers and peddlers from doing business, see "Courts," § 260.

Power of state to impose license tax, see "Licenses," § 5.

Requirement of licenses as regulation of commerce, see "Commerce," § 68.

Requirement of licenses as taking property without joint compensation, see "Eminent Domain," § 2.

Requirement of licenses from canvassers, drummers, or traveling salesmen, see "Licenses," § 15.

Requirement of licenses from dealers in particular articles, see "Licenses," § 16.

Requirement of licenses from transient or itinerant dealers, merchants, traders or vendors, see "Licenses," § 15.

## § 1. Power to regulate.

## § 2. Statutory and municipal regulations.

*Cross-Reference.*

See post, §§ 4, 5.

*Annotation.*

Delegation of municipal power as to license of hawkers and peddlers.—20 L. R. A. 724, note.

Discrimination against nonresidents by statute or ordinance as to license to peddlers and hucksters.—40 L. R. A. (N. S.) 286, 289, note.

Requiring license for sale of milk by hawkers and peddlers.—1 L. R. A. (N. S.) 936; 27 L. R. A. (N. S.) 1151, notes.

Validity of license or occupation tax on hawkers and peddlers and persons engaged in soliciting orders by sample or otherwise as an exercise of the police power.—19 L. R. A. (N. S.) 301; 28 L. R. A. (N. S.) 265, notes.

Validity of ordinances regulating hawking and peddling.—14 L. R. A. 100, note.

Validity of ordinances regulating conduct of licensed street hucksters or peddlers.—8 L. R. A. (N. S.) 304, note.

## § 3. Who are hawkers or peddlers.

## § 4. Licenses and taxes.

*Cross-References.*

On canvassers, drummers, or traveling salesmen, see "Licenses," § 15.

\*Annotation: Words and Phrases, same title.

On dealers in particular articles, see "Licenses," § 16.

On transient or itinerant dealers, merchants, traders, or venders, see "Licenses," § 15.

*Annotation.*

To hawkers and peddlers.—3 L. R. A. 705; 7 L. R. A. 666; 8 L. R. A. 273, notes.

Discrimination against nonresidents by statute or ordinances as to license.—40 L. R. A. (N. S.) 286, note.

Right to discriminate between harmless articles in legislation regulating peddlers.—21 L. R. A. (N. S.) 349; 35 L. R. A. (N.) 1079; 40 L. R. A. (N. S.) 1207, notes.

State authority to impose license.—11 L. R. A. 219, note.

State license tax as interference with commerce, generally.—9 L. R. A. 366, note.

Tax on occupations as interference with commerce.—60 L. R. A. 691, note.

Peddlers and drummers as related to interstate commerce.—14 L. R. A. 97, note.

Discrimination against manufacturers or products of other states.—19 L. R. A. 398; 28 L. R. A. (N. S.) 265, note.

Validity as an exercise of the police power.—19 L. R. A. (N. S.) 301; 28 L. R. A. (N. S.) 265, notes.

Validity as an exercise of the taxing power.—19 L. R. A. (N. S.) 303, note.

Validity of ordinance regulating conduct of licensed street hucksters or peddlers.—8 L. R. A. (N. S.) 304, note.

Validity of license tax on peddlers so high as to be prohibitory in effect.—35 L. R. A. (N. S.) 1074, note.

Validity of license or occupation tax on hawkers and peddlers and persons engaged in soliciting orders by sample or otherwise as an exercise of the police power.—19 L. R. A. (N. S.) 301; 28 L. R. A. (N. S.) 265, notes.

**§ 5. Validity of sales.**

*Annotation.*

Validity of contract by unlicensed peddlers.—12 L. R. A. (N. S.) 616, note.

(a) Code 1888, art. 56, §§ 27-30, providing that hawkers and peddlers must have licenses to sell within the state, and inflicting a penalty for violation thereof, is a revenue statute merely, not prohibitive, and does not render void a note given for the purchase of goods from a peddler selling without a license.—*Banks v. McCosker*, 82 Md. 518, 34 Atl. 539. (See Code 1911, art. 56, §§ 24-27; Id. [vol. 3], art. 56, §§ 31A, 31B.) [Cited and annotated in 12 L. R. A. (N. S.) 616, on validity of contracts in business, transaction of which is misdemeanor.]

\*Annotation: Words and Phrases, same title.

**§ 6. Penalties for violations of regulations.**

*Annotation.*

Power of municipality as well as state to punish for peddling.—17 L. R. A. (N. S.) 53, note.

**§ 7. Offenses.**

*Cross-References.*

Appeal as proper mode of review, see "Criminal Law," § 1007.

Applicability of instructions to case, see "Criminal Law," § 815.

Extent of burden of proof in prosecution of peddlers for unauthorized sales, see "Criminal Law," § 327.

Mistake of law, as defense, see "Criminal Law," § 32.

Negating exceptions in statute or ordinance in complaint, indictment or information, see "Indictment and Information," § 111.

Preliminary complaint, see "Criminal Law," § 209.

Preliminary proceedings, see "Criminal Law," § 212.

Preliminary warrant, see "Criminal Law," § 218.

Review of summary conviction, see "Criminal Law," § 260.

Right of prosecution to review, see "Criminal Law," § 1024.

**HAY.\***

*Cross-Reference.*

Measure of damages for attached hay ruined by rain, see "Attachment," § 375.

**HAYSTACKS.\***

*Cross-Reference.*

Burning as arson, see "Arson," § 12.

**HAZARD.\***

*Cross-References.*

See "Gaming."

Bottomry and respondentia, see "Shipping," §§ 88-100.

Contracts involving hazard as affecting usury, see "Usury," §§ 36-41.

Risk insured, see "Insurance."

**HAZING.**

*Cross-Reference.*

Civil liability for assault, see "Assault and Battery," § 35.

**HEAD MONEY.\***

*Cross-Reference.*

See "Bounties," § 2.

**HEADNOTES.***Cross-Reference.*

Necessity, see "Courts," § 109.

**HEAD OF FAMILY.\****Cross-References.*

Right to exemptions, see "Exemptions," § 16; "Homestead," § 18.

**HEADRIGHT.\****Cross-References.*

Adverse possession under void readright grant, see "Adverse Possession," § 73. Claims to state lands in Texas, see "Public Lands," § 172.

**HEALERS.\****Cross-Reference.*

See "Physicians and Surgeons," § 6.

**HEALTH.\****Scope-Note.*

[INCLUDES protection of public from disease or danger to life in general; and violations of health laws, and prosecution and punishment thereof as public offenses.

[EXCLUDES unwholesome or adulterated food (see "Food"; "Adulteration"); medicines (see "Druggists"); intoxicants (see "Intoxicating Liquors"); poisons (see "Poisons"); nuisances as affecting individual rights, liabilities for injuries to the health of individuals, and criminal prosecutions for maintaining nuisances (see "Nuisance"); and special protection of the health of particular classes of persons, as children (see "Infants") and employees (see "Master and Servant").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Boards of Health and Sanitary Officers.**

- § 1. National board.
- § 2. State and local boards.
- § 3. — Establishment of board and appointment and tenure of members.
- § 4. — Creation of sanitary districts.
- § 5. — Compensation and expenses.
- § 6. — Authority and duties in general.
- § 7. Officers and agents.
- § 8. Ordinances and resolutions.
- § 9. Orders and other decisions.
- § 10. — Making and requisites.
- § 11. — Operation and effect.
- § 12. Abatement of nuisances.
- § 13. — In general.
- § 14. — Vacation and destruction of buildings.
- § 15. Contracts and indebtedness.
- § 16. — In general.
- § 17. — Employment of physicians and assistants.
- § 18. Liabilities for torts.
- § 19. Actions in general.

**II. Regulations and Offenses.**

- § 20. Power to make regulations.
- § 21. Constitutionality of regulations.

\*Annotation: Words and Phrases, same title.

## II. Regulations and Offenses—Continued.

- § 22. Contagious and infectious diseases.
- § 23. — Precautions in general.
- § 24. — Quarantine.
- § 25. — Vaccination.
- § 26. Nuisances.
- § 27. — In general.
- § 28. — Pollution of air or water.
- § 29. — Offensive or noxious occupations.
- § 31. Qualifications for and conduct of occupations or business.
- § 32. Unhealthful or unsafe buildings.
- § 33. Unhealthful practices.
- § 34. Registration of vital statistics and report of contagious diseases.
- § 35. Permits for burial or transportation of dead bodies.
- § 36. Charges for inspection and permits.
- § 37. Violations of regulations.
- § 38. Penalties and actions therefor.
- § 39. Criminal prosecutions.
- § 40. — Indictment or information.
- § 41. — Evidence.
- § 42. — Trial.
- § 43. — Sentence and punishment.

### *Cross-References.*

See "Hospitals."

Adulteration as a public offense, see "Adulteration."

Appeal by board of health from decision of county board, see "Counties," § 58.

Best and secondary evidence of appointment of health officer, see "Evidence," § 158.

Civil liability for negligent communication of contagious disease, see "Negligence," §§ 1, 2.

Conflicting regulations by state and municipality, see "Municipal Corporations," § 592.

Constitutionality of regulations, delegation of legislative power to state board of health, see "Constitutional Law," §§ 60, 62.

Constitutionality of regulations, denying equal protection of laws, see "Constitutional Law," §§ 212, 215.

Constitutionality of regulations, interference with interstate commerce, see "Commerce," § 52.

Constitutionality of regulations, taking property without compensation, see "Eminent Domain," § 2.

Constitutionality of regulations, taking property without due process of law, see "Constitutional Law," § 278.

Constitutionality of statute excluding unvaccinated children from schools, violation of right to education, see "Constitutional Law," § 85.

Constitutionality of statutes excluding unvaccinated children from schools, class legislation, see "Constitutional Law," § 208.

Constitutionality of statutes, special legislation, see "Statutes," § 94.

Constitutionality of statutes, subjects, and titles of acts, see "Statutes," § 110½.

Contagious and infectious diseases of animals, see "Animals," §§ 29-36.

County bonds for sanitary purposes, see "Counties," § 187.

Destruction of diseased animals, see "Animals," § 32.

Draining stagnant ponds on railroad right of way, see "Railroads," § 255.

Duty of carrier to heat depot, see "Carriers," § 286.

Duty of sheriff to prevent spread of contagious diseases among prisoners, see "Prisons," § 17.

Establishment of cemeteries, see "Cemeteries," §§ 4, 9.

Establishment of drains for promotion of public health, see "Drains," § 6.

Exemption of property of sanitary districts from taxation, see "Taxation," § 213.

Formal requisites of contracts of county board for promotion of health, see "Counties," § 121.

Form and sufficiency of local legislation, see "Municipal Corporations," § 594.

Judicial notice of facts relating to health, see "Evidence," § 14.

Jurisdiction of United States Supreme Court dependent on existence of controversy between a state and the citizens of another state, see "Courts," § 305.

Jurisdiction of United States Supreme Court of controversy between states over enforcement of health regulations, see "Courts," § 304.

Liability for expense of prisoners in pesthouse, see "Prisons," § 18.

Liability of county for care of pauper afflicted with contagious disease, see "Paupers," § 39.

Liability of master for injury to health of servant, see "Master and Servant," § 96.

Liability of municipality for rental value of house appropriated as hospital, see "Municipal Corporations," § 249.

Liability of municipality for tortious acts of health officers, see "Municipal Corporations," § 747.

Liability of pauper for expense of treatment for contagious disease, see "Paupers," § 40.

Municipal department of health, see "Municipal Corporations," § 191.

Of person insured, affecting validity of policy, see "Insurance," § 291.

Power of county to contract to pay for building destroyed for sanitary reasons, see "Counties," § 113.

Power of county to levy tax for suppression of epidemic, see "Counties," § 192.

Power of municipal corporations under general grants of authority to legislate for public health and welfare, see "Municipal Corporations," § 597.

Power of municipal corporation to establish pesthouse outside city limits, see "Municipal Corporations," § 277.

Presentation of claims against county, see "Counties," §§ 201, 203, 204.

Presumptions as to health, see "Evidence," § 58.

Prosecution for transmission of deleterious substance by interstate carrier, see "Carriers," § 38.

Protection of health of children, see "Infants," § 13.

Records of boards of health as evidence, see "Evidence," § 333.

Regulation of druggists, see "Druggists," § 2.

Regulation of manufacture, sale, and use of articles of food or drink, see "Food."

Regulation of practice of medicine, see "Physicians and Surgeons."

Regulations as to drinking water in railroad cars, see "Railroads," § 255.

Regulations for protection of employees, see "Master and Servant," §§ 10-18.

Regulations of public schools, see "Schools and School Districts," §§ 157, 158.

Restraining acts of officers, see "Injunction," § 75.

Right of way of ambulance over street railroad tracks, see "Street Railroads," § 85.

Right to jury trial in proceedings for destruction of diseased trees, see "Jury," § 19.

Specific power to establish pesthouses as excluding general power, see "Municipal Corporations," § 58.

Words imputing contagious disease as libel or slander, see "Libel and Slander," § 8.

## I. BOARDS OF HEALTH AND SANITARY OFFICERS.

### Cross-Reference.

Mandamus to control appointment of commissioner, see "Mandamus," § 76.

### § 1. National board.

### §§ 2-6. State and local boards.

#### Cross-References.

Annexation of sanitary district to city, see "Municipal Corporations," § 29.

Delegation of legislative powers to board of health, see "Constitutional Law," § 62.

Rules for construction of statutes, see "Statutes," § 227.

Subject and title of act, see "Statutes," § 119.

### § 7. Officers and agents.

#### Cross-References.

Construction of contract of employment by city, see "Municipal Corporations," § 219.

Increase or reduction of compensation, see "Officers," § 100.

Restraining appointee from discharging duties, see "Officers," § 82.

§§ 8-11. (See Analysis.)

### §§ 12-14. Abatement of nuisance.

#### Annotation.

Power of health authorities to require alteration of private property in a particular manner to abate conditions endangering public health.—24 L. R. A. (N. S.) 241, note.

Power of board of health as to nuisances.—36 L. R. A. 603, note.

(a) Under the power to preserve the health of the inhabitants, a city has the undoubted right to pass ordinances regulating the removal of house dirt, night soil, refuse, offal, and filth by persons licensed to perform such work, and providing for the prohibition, abatement, and suppression of whatever is intrinsically and inevitably a nuisance.—*Boehm v. City of Baltimore*, 61 Md. 259. [Cited and annotated in 36 L. R. A. 601, on municipality's power to define, prevent, and abate nuisance; in 38 L. R. A. 314, 316, on municipal power over nuisances affecting safety, health, and personal comfort; in 9 L. R. A. (N. S.) 733, on expenditure in re-

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.



liance on license from public, as preventing revocation in interest of public health; in 35 L. R. A. (N. S.) 718, on power of municipality to revoke business license.]

### §§ 15-17. Contracts and indebtedness.

#### Cross-References.

Contracts by city, see "Municipal Corporations," §§ 228, 231.

Power of county to purchase medical supplies, see "Counties," § 152.

Recovery of expenditures by another municipality against county of domicile of person cared for, see "Counties," § 133.

(a) Recovery of expenses incurred by a health officer who boarded a vessel and sent persons liable to be infected with smallpox, but not actually infected, to the hospital, is not limited to the amount absolutely necessary to prevent the introduction of the disease, nor to such amount as in the opinion of the health officer was necessary, but to the reasonable expenses incurred by his action.—*Harrison v. City of Baltimore*, 1 Gill 264.

[Cited and annotated in 26 L. R. A. 485, 487, on quarantine regulations; in 36 L. R. A. 602, 604, on municipality's power to define, prevent, and abate nuisance; in 38 L. R. A. 312, on municipal power over nuisances affecting safety, health, and personal comfort.]

### § 18. Liabilities for torts.

#### Cross-References.

Liabilities of cities, see "Municipal Corporations," § 723.

Liabilities of counties, see "Counties," § 146.

Liability of municipality for torts of board of health, see "Municipal Corporations," § 747.

#### Annotation.

Liability of municipality for injuries resulting from use of dumping ground.—6 L. R. A. (N. S.) 1013, note.

Personal liability of member of board of health, or of health officer.—5 L. R. A. (N. S.) 635, note.

### § 19. Actions in general.

## II. REGULATIONS AND OFFENSES.

#### Cross-References.

Adulteration as a public offense, see "Adulteration."

Conflicting regulations by state and municipality, see "Municipal Corporations," § 592.

Construction of penal statutes, see "Statutes," § 241.

Form and sufficiency of local legislation, see "Municipal Corporations," § 594.

Identification of act amended, see "Statutes," § 138.

Powers of municipal corporations under general grants of authority to legislate for general welfare, see "Municipal Corporations," § 597.

Presumptions as to enactment of statutes, see "Statutes," § 283.

Regulation of druggists, see "Druggists," § 2.

Regulation of food, see "Food."

Regulation of practice of medicine, see "Physicians and Surgeons."

Regulation of public schools, see "Schools and School Districts," §§ 157, 158.

Regulations as to drinking water in railroad cars, see "Railroads," § 255.

Regulations for protection of employee, see "Master and Servant," §§ 10-18.

Transmission of deleterious matter by interstate carriers as offense, see "Carriers," § 38.

### § 20. Power to make regulations.

### § 21. Constitutionality of regulations.

#### Cross-References.

Class legislation, see "Constitutional Law," § 208.

Delegation of legislative power to state board of health, see "Constitutional Law," §§ 60, 62.

Due process of law, see "Constitutional Law," § 278.

Equal protection of laws, see "Constitutional Law," §§ 212, 215.

General or special statute, see "Statutes," § 94.

Interference with interstate commerce, see "Commerce," § 52.

Sufficiency of title of act, see "Statutes," § 110½.

Violation of right to education, see "Constitutional Law," § 85.

#### Annotation.

Constitutionality of laws prohibiting carrying on of employments or occupations upon certain premises.—44 L. R. A. (N. S.) 46, note.

Constitutionality of statutory regulations as to safety and sanitary conditions of tenement, lodging, and boarding houses.—17 L. R. A. (N. S.) 486, note.

Validity and construction of statutory regulations as to infected animals.—26 L. R. A. 638, note.

(a) Act 1902, p. 121, c. 101, adding four additional sections to Code 1888, art. 27, tit. "Crimes and Punishments," subtit. "Health, Workshops and Factories, Sweating System," provides by section to be known as 149ee (§ 240), that no room or apartment in any tenement or dwelling house shall be used, except by the immediate family, for the manufacture of clothing, etc., and that no room or apartment shall be so used until a permit is obtained from the chief of the bureau of industrial statistics, after an in-

spection. This permit may be revoked at any time the health of the community or those employed may require it. No person, firm, or corporation can establish such a workroom in any building in the rear of a tenement house without a permit. Every person, etc., giving out incomplete materials from which such articles are made, or employing persons in such a workroom, shall keep a written register of the names and addresses of employees. Section 149ff (§ 241), gives the chief of the bureau of industrial statistics and certain other officials authority to enter any room, factory, etc., where wearing apparel is manufactured, for the purpose of inspection, etc. Section 149gg (§ 242), authorizes the chief to appoint deputies and assistants to make inspections. Section 149hh (§ 243), prescribes the punishment for violation of the act. *Held*, that, the statute has a substantial relation to the public health, so as to be within the scope of the police power.—*State v. Hyman*, 98 Md. 596, 57 Atl. 6, 64 L. R. A. 637. (See Code 1911 [vol. 3], art. 27, §§ 264-275.) [Cited and annotated in 44 L. R. A. (N. S.) 47, on constitutionality of laws prohibiting carrying on of employment or occupations upon certain premises; in 17 L. R. A. (N. S.) 487, on constitutionality of statutory regulations as to safety and sanitary conditions of tenement, lodging, and boarding houses.]

(b) *Held*, also, the statute is not objectionable as clothing officials with arbitrary power.—*State v. Hyman*, 98 Md. 596, 57 Atl. 6, 64 L. R. A. 637. [Cited and annotated, see supra.]

## § 22. Contagious and infectious diseases.

### Cross-References.

Duty of sheriff to prevent spread of contagious diseases among prisoners, see "Prisons," § 17.

Of animals, see "Animals," §§ 29-36.

## § 23.—Precautions in general.

(a) The placing of a woman afflicted with leprosy in the private home of a laborer (not an officer of the city) does not amount to an establishment of a hospital for the isolation and treatment of contagious diseases, as permitted by Code Pub. Loc. Laws, applicable to Baltimore city, art. 4, §§ 378, 409.—*City of Baltimore v. Fairfield Imp. Co.*, 87 Md.

352, 39 Atl. 1081, 40 L. R. A. 494, 67 Am. St. Rep. 344. (See Balto. City Rev. Charter, § 6, subs. 9, 10.) [Cited and annotated in 53 L. R. A. 891, on prescriptive right to maintain public nuisance; in 5 L. R. A. (N. S.) 1029, on property owner's right to complain of contagious-disease hospital in neighborhood; in 18 L. R. A. (N. S.) 260, on right of municipality to establish contagious-disease hospital beyond city limits; in 23 L. R. A. (N. S.) 1189, on right to injunction against being sent to pesthouse; in 29 L. R. A. (N. S.) 49, on hospital as nuisance.]

(b) The power to erect and maintain hospitals and pest houses does not justify the making of a contract with a laborer for the keeping of one afflicted with leprosy at his home located on city land in a settled district, since the act has a tendency to extend the disease instead of protecting the community.—*City of Baltimore v. Fairfield Imp. Co.* 87 Md. 352, 39 Atl. 1081, 40 L. R. A. 494, 67 Am. St. Rep. 344. [Cited and annotated, see supra.]

## § 24.—Quarantine.

### Cross-References.

Of animals, see "Animals," § 30.

Quarantine regulations as interference with interstate commerce, see "Commerce," § 52.

### Annotation.

Responsibility for violation of quarantine by children or others under one's control.—45 L. R. A. (N. S.) 580, note.

Quarantine regulations by health authorities.—26 L. R. A. 484, note.

(a) Under the charter and ordinances of the city of Baltimore, the health officer had a right to board a vessel and send persons liable to be infected with the smallpox, but not actually infected, to the hospital, if, acting with reasonable skill and judgment, and with a sound and honest discretion, he judged it necessary to prevent the introduction or propagation of the disease.—*Harrison v. City of Baltimore*, 1 Gill 264. (See Balto. City Rev. Charter, § 6, subs. 9, 10.) [Cited and annotated, see supra, §§ 15-17.]

## § 25.—Vaccination.

### Cross-References.

Exclusion of unvaccinated children from schools as class legislation, see "Constitutional Law," § 208.

Exclusion of unvaccinated children from schools as violation of right to education, see "Constitutional Law," § 85.

Of school children, see "Schools and School Districts," § 158.

*Annotation.*

Power to require vaccination.—17 L. R. A. (N. S.) 709, note.

Right to compel vaccination.—25 L. R. A. 152; 26 L. R. A. 728, notes.

Power of municipality to incur expense of vaccination.—26 L. R. A. 727, note.

**§§ 26-29. Nuisances.**

*Annotation.*

Sanitary regulations as to stables.—45 L. R. A. (N. S.) 575, note.

Power of state or health authorities to forbid the use of a polluted water supply.—23 L. R. A. (N. S.) 766, note.

**§ 30.** (Omitted from the classification used herein.)

**§ 31. Qualification for and conduct of occupation or business.**

(a) The requirements of act 1902, c. 160, § 8, as to the necessary skill and knowledge to be possessed by applicants for licenses of undertaking, *held*, with the police power.—*Keller v. State*, 122 Md. 677, 90 Atl. 603.

**§ 32. Unhealthful or unsafe buildings.**

*Cross-Reference.*

Construction of penal statute, see "Statutes," § 241.

(a) Act 1902, p. 121, c. 101, adding additional sections to Code, art. 27, relating to health, workshops, and factories, and providing that no room or apartment in any tenement or dwelling house shall be used except by the immediate family for the manufacture of clothing, and that no room or apartment shall be so used until a permit is obtained from the chief of the bureau of industrial statistics after an inspection, does not apply to homes or places where wearing apparel is made for purposes other than sale.—*State v. Hyman*, 98 Md. 596, 57 Atl. 6, 64 L. R. A. 637. (See Code 1911 [vol. 3], art. 27, §§ 264-275.) [*Cited and annotated*, see *supra*, § 21.]

**§§ 33-43.** (See Analysis.)

**HEALTH INSURANCE.**

*Cross-Reference.*

See "Insurance."

**HEARING.\***

*Cross-Reference.*

See "Trial."

Adoption by federal courts of practice of state courts, see "Courts," § 352.

Appealability of orders relating to conduct of trial, see "Appeal and Error," § 87.

By arbitrators, see "Arbitration and Award," §§ 31, 39.

By master or commissioner in chancery, see "Equity," § 405.

By referee, see "Reference," §§ 47-72.

Conduct of trial on remand from appellate court, see "Appeal and Error," § 1213.

Contest of attachment by claimant of property, see "Attachment," § 293.

Death of party after hearing ground for abatement, see "Abatement and Revival," §§ 67-69.

Finality of orders relating to time, place or conduct of trial, see "Appeal and Error," § 70.

In municipal courts, see "Courts," § 189.

In probate courts, see "Courts," § 202.

In proceedings to support or enforce attachment, see "Attachment," § 213.

In United States Court of Claims, see "Courts," § 465.

Irregularities as ground for vacation of judgment, see "Judgment," § 359.

Mandamus to control acts of court or judge at trial or hearing of civil action, see "Mandamus," § 48.

On agreed case, see "Submission of Controversy," § 18.

On appeal in admiralty causes, see "Admiralty," §§ 116, 117.

On appeal in highway proceedings, see "Highways," § 58.

On appeal in probate proceedings, see "Wills," §§ 372-382.

On appeal or writ of error in general, see "Appeal and Error," §§ 815-835; "Criminal Law," § 1132; "Justices of the Peace," §§ 169, 171-181.

On award, see "Arbitration and Award," § 85.

On bill of review, see "Equity," § 464.

On certiorari in general, see "Certiorari," §§ 61, 62.

On certiorari to review judgment of justice of the peace, see "Justices of the Peace," § 207.

On holidays, see "Holidays," § 5.

On review of judgment in deportation proceedings, see "Aliens," § 32.

On trial by court without jury, see "Trial," §§ 367-387.

Practice in federal courts, see "Courts," § 352.

Trial by jury of issues in equity, see "Equity," §§ 377-382.

Trial de novo on appeal, see "Appeal and Error," §§ 892-899; "Criminal Law," § 1139; "Justices of the Peace," §§ 171-181.

Trial de novo on appeal in probate proceedings, see "Wills," §§ 374-382.

Trial fees, see "Costs," § 157.

Want of notice of time and place of trial as ground for new trial, see "New Trial," § 84.

Witnesses, see "Witnesses."

\*Annotation: Words and Phrases, same title.

*Proceedings incident to trials.*

See "Continuance"; "New Trial"; "Reference"; "Stipulations."  
 Amendment of pleading during trial, see "Pleading," § 245.  
 Assessment of damages, see "Damages," §§ 193-224.  
 Challenge to jurors, see "Jury," §§ 83-142.  
 Entry of judgment after trial of issues, see "Judgment," §§ 191-269.  
 Examination of witnesses, see "Witnesses," §§ 224-310.  
 Feigned issue on motion to vacate judgment by confession, see "Judgment," § 68.  
 Harmless error in proceedings, see "Appeal and Error," § 1046.  
 Physical examination of injured person, see "Damages," § 206.  
 Place of trial, see "Venue."  
 Right to trial by jury, see "Jury," §§ 9-37.  
 Summoning and attendance of jury, see "Jury," §§ 57-82.  
 Trial and determination of issue of insanity, see "Criminal Law," §§ 624, 625.

*Trial of actions by or against particular classes of persons.*

See "Attorney and Client," § 167; "Beneficial Associations," § 20; "Brokers," §§ 11, 37, 38, 88; "Building and Loan Associations," § 41; "Carriers," §§ 69, 106, 136, 137, 166-168, 187, 230, 278, 320-322, 347-349, 383, 384; "Corporations," §§ 90, 189, 319, 521, 674; "Counties," § 224; "Druggists," §§ 10, 11; "Executors and Administrators," § 451; "Factors," §§ 42, 43, 45; "Guardian and Ward," § 132; "Husband and Wife," §§ 235, 270, 298½, 335, 350; "Indians," § 27; "Infants," § 102; "Innkeepers," §§ 11, 12; "Insane Persons," § 99; "Landlord and Tenant," §§ 169, 180, 233, 262, 270, 274, 285, 291, 309, 331; "Livery Stable Keepers," §§ 7, 11, 12; "Master and Servant," §§ 43, 44, 283-289, 291-297, 332; "Municipal Corporations," §§ 742, 820-823, 845; "Parent and Child," §§ 3, 6, 11, 13; "Pawnbrokers," § 9; "Physicians and Surgeons," §§ 11, 13, 18, 24; "Principal and Agent," §§ 192-195; "Railroads," §§ 104, 190, 350-352, 400-402, 445-447, 484-486; "Receivers," § 185; "Religious Societies," § 31; "Schools and School Districts," § 122; "Sheriffs and Constables," §§ 74, 125; "States," § 211; "Street Railroads," §§ 57, 117-119; "Theaters and Shows," § 6; "Towns," § 80; "Turnpikes and Toll Roads," § 49; "United States," § 143; "Warehousemen," § 34.  
 Agricultural societies, see "Agriculture," § 4.  
 Assignees, see "Assignments," § 138.  
 Assignees for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 279, 352.  
 Assignees or trustees in insolvency, see "Insolvency," § 100.

Banks, see "Banks and Banking," §§ 55, 143, 154, 175, 228, 306.  
 Buyer of goods, see "Sales," § 233.  
 Claimants under tax titles, see "Taxation," § 811.  
 Co-sureties, see "Principal and Surety," § 200.  
 Co-tenants, see "Tenancy in Common," § 38.  
 Foreign corporations, see "Corporations," § 674.  
 Gas companies, see "Gas," §§ 14½, 20.  
 Grantees of mortgaged property assuming mortgage debt, see "Mortgages," § 292.  
 Guarantors, see "Guaranty," § 92.  
 Heirs, distributees, or purchasers, on debts of intestate, see "Descent and Distribution," § 148.  
 Insurance companies, see "Insurance," §§ 667-670, 824-827.  
 License officers, see "Marriage," § 25.  
 Officers and agents of corporations, see "Corporations," § 363.  
 Owner of property taken for public use, see "Eminent Domain," § 307.  
 Parties to bailment, see "Bailment," § 33.  
 Partners or partnerships, see "Partnership," §§ 122, 218, 242, 329.  
 Prison officers, see "Prisons," § 10.  
 Sheriffs and constables and their indemnitors, see "Sheriffs and Constables," § 140.  
 Stockholders, see "Corporations," § 271.  
 Sureties, see "Principal and Surety," § 162.  
 Sureties on bond of liquor dealer, see "Intoxicating Liquors," § 88.  
 Sureties on guardians' bonds, see "Guardian and Ward," § 182.  
 Taxpayers, see "Municipal Corporations," § 1000.  
 Telegraph or telephone companies, see "Licenses," § 7; "Telegraphs and Telephones," §§ 20, 72-75, 78.  
 Trustees, see "Trusts," § 373.  
 Trustees in bankruptcy, see "Bankruptcy," § 304.  
 Wharfingers, see "Wharves," § 21.

*Trial of particular civil actions or proceedings.*

See "Action on the Case," § 6; "Assault and Battery," §§ 42-44; "Assumpsit, Action of," §§ 28-31; "Bankruptcy," §§ 49, 94-97; "Cancellation of Instruments," §§ 49-53; "Creditors' Suit," § 48; "Detinue," §§ 22-24; "Divorce," §§ 141-150; "Ejectment," §§ 1, 102, 104-111, 163; "Entry, Writ of," § 22; "False Imprisonment," §§ 38-40; "Forcible Entry and Detainer," §§ 32-36; "Fraud," §§ 64-66; "Garnishment," § 166; "Insolvency," § 36; "Interpleader," § 31; "Libel and Slander," §§ 122-125; "Malicious Prosecution," §§ 70-73; "Mandamus," §§ 170-174; "Money Lent," § 8; "Money Paid," § 10; "Money Received," § 19; "Negligence," §§ 136, 138-142; "Partition," §§ 65-67, 69-71; "Quieting Title," § 47; "Quo Warranto," § 58; "Reformation of Instruments," §

- 46; "Replevin," §§ 86-91, 93-97; "Specific Performance," § 123; "Submission of Controversy," § 18; "Trespass," §§ 65, 67-69; "Trespass to Try Title," §§ 44-46; "Trover and Conversion," §§ 65-68; "Use and Occupation," § 11; "Work and Labor," § 30.
- Against guarantors, see "Guaranty," § 92.
- Against personal representative for accounting, see "Executors and Administrators," §§ 473, 474.
- Attachment proceedings to collect rent, see "Landlord and Tenant," § 229.
- Bastardy proceedings, see "Bastards," §§ 69-72.
- Claims against bankrupt's estate, see "Bankruptcy," §§ 339, 340.
- Claims against counties, see "Counties," § 204.
- Claims against insolvents, see "Assignments for Benefit of Creditors," § 306; "Insolvency," § 115.
- Condemnation proceedings, see "Eminent Domain," § 198.
- Contempt proceedings, see "Contempt," § 61.
- Contest of election to office, see "Elections," § 300.
- Contest of nomination for office, see "Elections," § 154.
- Disbarment proceedings, see "Attorney and Client," § 54.
- Discovery of assets of decedent's estate, see "Executors and Administrators," § 85.
- Disputed claims against estate of decedent, see "Executors and Administrators," §§ 249-254.
- Distress proceedings, see "Landlord and Tenant," § 270.
- Exceptions to report of referee, see "Reference," § 100.
- For accounting by broker, see "Brokers," § 37.
- For accounting by executor or administrator, see "Executors and Administrators," §§ 473, 474.
- For accounting in equity, see "Account," § 19.
- For advances or expenses by factor, see "Factors," § 45.
- For alienation of affections of husband or wife, see "Husband and Wife," § 335.
- For allowance for improvements or taxes paid, see "Ejectment," §§ 143, 149.
- For assessments by mutual insurance companies, see "Insurance," § 197.
- For breach of contract, see "Contracts," § 351.
- For breach of contract for carriage of passenger, see "Carriers," § 278.
- For breach of contract of sale, see "Sales," §§ 386-389, 420-422; "Vendor and Purchaser," §§ 331, 352.
- For breach of contract of sale of timber, see "Logs and Logging," § 3.
- For breach of contract to drive, float or raft logs, see "Logs and Logging," § 15.
- For breach of contract to saw or manufacture logs, see "Logs and Logging," § 21.
- For breach of covenant, see "Covenants," §§ 133-136.
- For breach of logging contract, see "Logs and Logging," § 8.
- For breach of marriage promise, see "Breach of Marriage Promise," §§ 34-37.
- For breach of warranty of goods sold, see "Sales," §§ 444-447.
- For causing death, see "Death," §§ 102-105.
- For compensation for driving intermingled or obstructing logs, see "Logs and Logging," § 17.
- For compensation of attorney, see "Attorney and Client," § 167.
- For compensation of broker, see "Brokers," § 88.
- For compensation of court stenographer, see "Courts," § 57.
- For compensation of innkeeper, see "Innkeepers," § 12.
- For compensation of physician or surgeon, see "Physicians and Surgeons," § 24.
- For conspiracy, see "Conspiracy," § 21.
- For contribution, see "Contribution," § 9.
- For conversion of logs in lumber, see "Logs and Logging," § 35.
- For criminal conversation, see "Husband and Wife," § 350.
- For damages for nuisance, see "Nuisance," §§ 53-55.
- For damages for rape, see "Rape," § 66.
- For damages from trespassing animals, see "Animals," § 100.
- For delay in transportation or delivery of goods, see "Carriers," §§ 106, 187.
- For delay in transportation or delivery of livestock, see "Carriers," § 230.
- For deportation of Chinese, see "Aliens," § 32.
- For deposits, see "Banks and Banking," § 154.
- For dismissal of appeal, see "Appeal and Error," § 801.
- For dissolution and accounting of partnership, see "Partnership," § 329.
- For diversion of water course, see "Waters and Water Courses," § 87.
- For ejection from theater, see "Theaters and Shows," § 4.
- For ejection of passenger or intruder from train, see "Carriers," §§ 383, 384.
- For equitable relief against judgment, see "Judgment," § 463.
- For eviction of tenant, see "Landlord and Tenant," § 180.
- For failure to deliver or misdelivery of live stock, see "Carriers," § 230.
- For flowage of lands by surface waters, see "Waters and Water Courses," § 126.
- For infringement of patent, see "Patents," §§ 276, 314.
- For infringement of trade-mark or trade-names, see "Trade-Marks and Trade-Names," § 99.
- For injunction, see "Injunction," § 130.
- For injuries at railroad crossings, see "Railroads," §§ 350-352.
- For injuries by artificial ponds, reservoirs, channels and dams, see "Waters and Water Courses," § 179.

For injuries by servants, see "Master and Servant," § 332.

For injuries from construction of railroad, see "Railroads," § 114.

For injuries from construction or maintenance of telegraph or telephone lines, see "Telegraphs and Telephones," § 20.

For injuries from defects in private roads, see "Private Roads," § 12.

For injuries from defects or obstructions in highways, see "Highways," §§ 213-215.

For injuries from defects or obstructions in streets, see "Municipal Corporations," §§ 820-823.

For injuries from defects or obstructions in toll roads, see "Turnpikes and Toll Roads," § 49.

For injuries from escape or explosion of gas, see "Gas," § 20.

For injuries from fires caused by operation of railroads, see "Railroads," §§ 484-486.

For injuries from negligence of agricultural society, see "Agriculture," § 4.

For injuries from negligence of landlord, see "Landlord and Tenant," § 169.

For injuries from negligence or default in transmission or delivery of telegraph or telephone message, see "Telegraphs and Telephones," §§ 72-75.

For injuries from obstruction of navigation, see "Navigable Waters," § 26.

For injuries from sale of drugs or poisons, see "Druggists," § 10.

For injuries from sale of liquor, see "Intoxicating Liquors," §§ 315-317.

For injuries from use of poison, see "Poisons," § 6.

For injuries from use of weapons, see "Weapons," § 18.

For injuries incident to construction or operation of gas works, see "Gas," § 14½.

For injuries incident to driving or rafting logs, see "Logs and Logging," § 19.

For injuries on wharves, see "Wharves," § 21.

For injuries to animals on or near railroad tracks, see "Railroads," §§ 445-448.

For injuries to easements, see "Easements," § 71.

For injuries to or conversion of mortgaged property, see "Chattel Mortgages," § 177.

For injuries to or destruction of logs or rafts, see "Logs and Logging," § 19.

For injuries to passenger, see "Carriers," §§ 320-322, 347-349; "Ferries," § 33; "Shipping," § 166.

For injuries to persons attending theaters or other places of public amusement, see "Theaters and Shows," § 6.

For injuries to persons hiring horses from livery man, see "Livery Stable Keepers," § 11.

For injuries to persons on or near street railroad tracks, see "Railroads," §§ 400-402; "Street Railroads," §§ 117-119.

For injuries to riparian lands from floatage of logs and rafts, see "Navigable Waters," § 39.

For injuries to servants, see "Master and Servant," §§ 283-289, 291-297.

For injuries to vessels at wharf, see "Wharves," § 20.

For injuries to wharf, see "Wharves," § 22.

For judgment for taxes against real property for taxes, see "Taxation," § 645.

For loss of or injuries to hired horses or vehicles, see "Livery Stable Keepers," § 12.

For loss of or injuries to horses or vehicles in care of liverymen, see "Livery Stable Keepers," § 7.

For loss of or injuries to logs, see "Logs and Logging," § 20.

For loss of or injury to goods in course of transportation, see "Carriers," §§ 136, 137, 166-168, 187; "Shipping," § 132.

For loss of or injury to goods stored, see "Warehousemen," § 34.

For loss of or injury to livestock in course of transportation, see "Carriers," § 230.

For loss of or injury to property of guest, see "Innkeepers," § 11.

For misdelivery or nondelivery of goods stored, see "Warehousemen," § 34.

For money collected by attorney, see "Attorney and Client," § 128.

For necessities furnished child, see "Parent and Child," § 3.

For negligence of attorney, see "Attorney and Client," § 129.

For negligence or default of bank in making collections, see "Banks and Banking," § 175.

For negligence or malpractice of physician or surgeon, see "Physicians and Surgeons," § 18.

For negligence or misconduct of broker, see "Brokers," § 38.

For negligence or misconduct of sheriff or constable, see "Sheriffs and Constables," § 140.

For negligent or wrongful act of factor, see "Factors," § 43.

For negligent use of highway, see "Highways," § 184.

For obstruction of highway, see "Highways," § 160.

For obstruction of mail, see "Post Office," § 53.

For obstruction of water course, see "Waters and Water Courses," § 63.

For penalty for cutting trees without consent of owner, see "Logs and Logging," § 36.

For penalty for exacting usury, see "Usury," § 142.

For penalty for illegal issue of marriage license, see "Marriage," § 25.

For penalty for obstruction of highway, see "Highways," § 161.

For penalty for refusal or failure to transmit telegrams, see "Telegraphs and Telephones," § 78.

For penalty for violation of liquor laws, see "Intoxicating Liquors," § 190.

- For penalty for violation of municipal regulations, see "Municipal Corporations," § 633.
- For penalty for violation of regulations relating to articles of food or drink, see "Food," § 16.
- For penalty for violation of regulations relating to druggists, see "Druggists," § 11.
- For pollution of water course, see "Waters and Water Courses," § 77.
- For premiums, see "Insurance," § 188.
- For price of goods consigned to factor, see "Factors," § 42.
- For price of land sold, see "Vendor and Purchaser," § 317.
- For price of logs sold, see "Logs and Logging," § 34.
- For price or value of goods sold, see "Sales," §§ 363-365.
- For rebate on surrender of liquor license, see "Intoxicating Liquors," § 97.
- For refusal to pay check, see "Banks and Banking," § 143.
- For removal of executors and administrators, see "Executors and Administrators," § 35.
- For removal of policemen, see "Municipal Corporations," § 185.
- For removal of trustee, see "Trusts," § 167.
- For rent, see "Landlord and Tenant," § 233.
- For rescission of sale by seller, see "Sales," § 110.
- For reward, see "Rewards," § 15.
- For royalties, see "Patents," § 219.
- For sale of land to enforce assessment for public improvements, see "Municipal Corporations," § 569.
- For salvage, see "Salvage," § 49.
- For seduction, see "Seduction," §§ 24-26.
- For separate maintenance of wife, see "Husband and Wife," § 298½.
- For services or wages of child, see "Parent and Child," § 6.
- For supplies furnished to, or expenditures incurred on behalf of paupers, see "Paupers," § 52.
- For taking property for public use without compensation, see "Eminent Domain," § 307.
- For tort in general, see "Torts," § 28.
- For torts of child, see "Parent and Child," § 13.
- For unfair competition in trade, see "Trade-Marks and Trade-Names," § 99.
- For unlawful detainer, see "Landlord and Tenant," § 291.
- For unpaid taxes, see "Taxation," § 594.
- For wages, see "Master and Servant," § 80.
- For wharfage, see "Wharves," § 19.
- For wrongful act of agent, see "Principal and Agent," § 79.
- For wrongful attachment, see "Attachment," §§ 379-381.
- For wrongful discharge of servant, see "Master and Servant," §§ 43, 44.
- For wrongful distress, see "Landlord and Tenant," § 274.
- For wrongful execution, see "Execution," § 473.
- For wrongful expulsion of pupil from public school, see "Schools and School Districts," § 177.
- Highway proceedings, see "Highways," § 33.
- In admiralty, see "Admiralty," §§ 78-82; "Collision," §§ 149-154.
- In condemnation proceedings, see "Eminent Domain," § 198.
- In contempt proceedings, see "Contempt," § 61.
- In discovery proceedings, see "Discovery," § 97.
- In drainage proceedings, see "Drains," § 34.
- In equity, see "Equity," §§ 358, 369-392.
- In highway proceedings, see "Highways," §§ 33, 39, 41, 72, 77.
- In inquisition in lunacy, see "Insane Persons," § 19.
- In inquisition of lunacy after conviction, see "Criminal Law," § 981.
- In probate proceedings and actions relating to wills or probate, see "Wills," §§ 307-337.
- In proceedings for accounting by assignee or trustee for benefit of creditors, see "Assignments for Benefit of Creditors," § 396.
- In proceedings for adoption of child, see "Adoption," § 13.
- In proceedings for removal of county seat, see "Counties," § 34.
- In proceedings for removal of municipal officer, see "Municipal Corporations," § 159.
- In proceedings to enforce orders of interstate commerce commission, see "Commerce," § 97.
- In proceedings to quash, vacate or dissolve attachment, see "Attachment," § 250.
- In proceedings to sell property of decedent, see "Executors and Administrators," § 339.
- In prohibition proceedings, see "Prohibition," § 29.
- In statutory proceedings for substitution of claimant, see "Interpleader," § 41.
- In summary proceedings by client against attorney, see "Attorney and Client," § 126.
- Of challenge to jurors for cause, see "Jury," § 133.
- Of challenge to panel or array of jurors, see "Jury," § 121.
- Of charges against school teacher, see "Schools and School Districts," § 141.
- Of claims against municipal corporation, see "Municipal Corporations," § 1012.
- Of claims against state, see "States," § 181.
- Of demurrer to evidence, see "Trial," § 156.
- Of exceptions to award of arbitrators, see "Arbitration and Award," § 68.
- Of exceptions to report of referee, see "Reference," § 100.
- Of issues between garnishee and plaintiff, see "Garnishment," § 166.

- Of objections as to qualifications of judge, see "Judges," § 51.
- Of objections or exceptions to assessment for public improvements, see "Municipal Corporations," § 491.
- Of persons interested in proposed public improvement, see "Municipal Corporations," § 298.
- Of petition for distribution of decedent's estate, see "Executors and Administrators," § 314.
- Of petition for incorporation of municipality, see "Municipal Corporations," § 12.
- Of pleas in abatement, see "Pleading," § 111.
- Of right of property garnished, see "Garnishment," §§ 200-226.
- Of right of property levied on, see "Attachment," §§ 280-329; "Executions," §§ 178-212.
- Of right of property taken in detinue, see "Detinue," § 16.
- On account, see "Account, Action On," §§ 8, 15, 23.
- On accounting by executor or administrator, see "Executors and Administrators," § 507.
- On accounting by guardian, see "Guardian and Ward," § 158.
- On accounting by trustee, see "Trusts," § 326.
- On account stated, see "Account Stated," § 20.
- On administration bond, see "Executors and Administrators," § 537.
- On application for discharge from custody under execution, see "Execution," § 450.
- On application for rehearing in appellate court, see "Appeal and Error," § 833.
- On assigned claims, see "Assignments," § 138.
- On bail bonds, see "Bail," §§ 36, 92.
- On bills or notes, see "Bills and Notes," §§ 536-539.
- On bonds in general, see "Bonds," §§ 140-143.
- On bonds and undertakings on appeal or writ of error, see "Appeal and Error," § 1247.
- On bonds of liquor dealers, see "Intoxicating Liquors," § 88.
- On bonds of public officers, see "Sheriffs and Constables," § 171.
- On bonds of tax collectors, see "Taxation," § 570.
- On bonds or undertakings in attachment proceedings, see "Attachment," § 352.
- On bonds or undertakings in replevin, see "Replevin," § 135.
- On contract of suretyship, see "Principal and Surety," § 162.
- On county warrants, see "Counties," § 170.
- On demurrer in equity, see "Equity," §§ 240, 241.
- On demurrer in general, see "Pleading," § 218.
- On demurrer to indictment or information, see "Indictment and Information," § 150.
- On election contest, see "Elections," § 300.
- On exceptions in equity, see "Equity," § 257.
- On gambling contracts, see "Gaming," § 50.
- On guaranty, see "Guaranty," § 92.
- On guardians' bonds, see "Guardian and Ward," § 182.
- On insurance policies, see "Insurance," §§ 667-670, 824-827.
- On judgment, see "Judgment," §§ 921, 945.
- On lost instruments, see "Lost Instruments," § 24.
- On municipal bonds, see "Municipal Corporations," § 955.
- On municipal improvement contracts, see "Municipal Corporations," § 374.
- On petition for habeas corpus, see "Habeas Corpus," § 59.
- On plea in equity, see "Equity," §§ 174, 175.
- On proceedings by board of health to abate nuisances, see "Health," § 13.
- On review of tax assessments, see "Taxation," § 486.
- On subscriptions to corporate stock, see "Corporations," § 90.
- On traverse of grounds of attachment, see "Attachment," § 258.
- On trial of disputed claim against estate of decedent, see "Executors and Administrators," § 253.
- On writ of return in habeas corpus proceedings, see "Habeas Corpus," § 90.
- Probate proceedings and actions relating to wills or probate, see "Wills," §§ 307-337.
- Relating to community or separate property of husband or wife, see "Husband and Wife," § 270.
- Relating to usury in general, see "Usury," §§ 118-120.
- Relating to usury on building association loans, see "Building and Loan Associations," § 33.
- Summary proceedings against officers, see "Sheriffs and Constables," § 125.
- Summary proceedings for sale of land to enforce assessment for public improvements, see "Municipal Corporations," § 554.
- Supplying or restoring records or instruments lost or destroyed, see "Records," § 17.
- To abate or restrain liquor nuisance, see "Intoxicating Liquors," § 276.
- To annul marriage, see "Marriage," § 60.
- To confirm or revise assessment for public improvements, see "Municipal Corporations," §§ 504, 505.
- To confirm or try tax title, see "Taxation," § 811.
- To construe wills, see "Wills," § 704.
- To determine reasonableness of license tax on telegraph or telephone companies, see "Licenses," § 7.
- To determine water rights, see "Waters and Water Courses," § 152.
- To enforce agricultural lien, see "Agriculture," § 15.
- To enforce landlord's lien, see "Landlord and Tenant," § 262.



To enforce liability for support of insane person, see "Insane Persons," § 58.

To enforce liability of bank officers, see "Banks and Banking," § 55.

To enforce liability of officers and agents of corporations, see "Corporations," § 363.

To enforce liability of stockholders for corporate debts and acts, see "Banks and Banking," §§ 49, 250; "Corporations," § 271.

To enforce lien for logs, lumber, mills, or mill products, see "Logs and Logging," § 33.

To enforce mechanic's lien, see "Mechanics' Liens," §§ 287-290.

To enforce orders of interstate commerce commission, see "Commerce," § 97.

To enforce penalty for abandonment of wife by husband, see "Husband and Wife," § 305½.

To enforce penalty for extortion, see "Extortion," § 11.

To enforce right of exemption, see "Exemptions," § 150; "Homestead," § 216.

To enforce vendor's lien, see "Vendor and Purchaser," §§ 284, 299.

To establish boundaries, see "Boundaries," §§ 39-42.

To establish claim to attached property, see "Attachment," §§ 309-312.

To establish claim to property garnished, see "Garnishment," §§ 220, 221.

To establish claim to property taken on execution, see "Execution," §§ 195-198.

To establish county boundaries, see "Counties," § 8.

To establish drainage districts, see "Drains," § 14.

To establish heirship, see "Descent and Distribution," § 71.

To establish or restore lost instruments, see "Lost Instruments," § 9.

To foreclose building association mortgage, see "Building and Loan Associations," § 39.

To foreclose liens or mortgages on railroad property, see "Railroads," § 190.

To foreclose mortgage, see "Chattel Mortgages," § 282; "Corporations," § 482; "Mortgages," §§ 475-482; "Railroads," § 190.

To protect water rights, see "Waters and Water Courses," § 247.

To recover duties paid, see "Customs Duties," § 116.

To recover exchanged personal property, see "Exchange of Property," § 13.

To recover fine paid, see "Fines," § 19.

To recover goods delivered by seller or proceeds thereof, see "Sales," §§ 326-329.

To recover payments made, see "Payment," § 89.

To recover possession of demised premises, see "Landlord and Tenant," §§ 285, 309.

To recover possession of property purchased at execution sale, see "Execution," § 280.

To recover price paid for goods, see "Sales," § 398.

To recover taxes paid, see "Taxation," § 543.

To redeem from mortgage sale, see "Mortgages," § 618.

To remove trustees, see "Trusts," § 167.

To restrain obstruction of highway, see "Highways," § 159.

To set aside administration sale, see "Executors and Administrators," § 380.

To set aside assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 352.

To set aside fraudulent transfer, see "Fraudulent Conveyances," §§ 306-310.

To set aside judgment against minor, see "Infants," § 111.

To vacate sale under mortgage or deed of trust, see "Mortgages," § 369.

Trial of right of property, see "Attachment," §§ 280-329; "Detinue," § 16; "Execution," §§ 178-212; "Garnishment," §§ 200-226.

*Trial of criminal prosecutions.*

See "Abduction," §§ 15, 16; "Abortion," §§ 13, 14; "Adulteration," § 13; "Adultery," § 15; "Affray," § 6; "Arson," §§ 39-42; "Assault and Battery," §§ 95-97; "Bigamy," §§ 13, 14; "Breach of the Peace," §§ 10-12; "Bribery," §§ 13-15; "Burglary," §§ 45-47; "Conspiracy," § 48; "Contempt," § 61; "Criminal Law," §§ 247-260, 618-904; "Disorderly Conduct," §§ 13-15; "Disorderly House," §§ 19-21; "Disturbance of Public Assemblage," §§ 14, 15; "Embezzlement," §§ 47-49; "Escape," § 11; "False Pretenses," §§ 51-53; "Fires," § 6; "Forgery," §§ 47-49; "Fornication," § 10; "Gaming," §§ 100-103; "Homicide," §§ 258-315; "Incest," § 16; "Larceny," §§ 67, 68, 70-79, 82, 83; "Lewdness," § 11; "Libel and Slander," §§ 151½, 158-160; "Malicious Mischief," § 10; "Mayhem," § 6; "Obscenity," §§ 19, 20; "Obstructing Justice," §§ 18, 19; "Perjury," §§ 36-38; "Prize Fighting," § 5; "Prostitution," § 5; "Rape," §§ 55-60; "Receiving Stolen Goods," § 9; "Riot," § 7; "Robbery," §§ 26-28; "Seduction," §§ 48-51; "Sodomy," § 7; "Threats," § 8; "Trespass," § 89; "Vagrancy," § 4.

Abandonment of wife by husband, see "Husband and Wife," §§ 310, 314.

Criminal prosecutions removed from state to federal court, see "Removal of Causes," § 119.

For administering poison, see "Poisons," § 9.

For offenses on insolvency of bank, see "Banks and Banking," § 85.

Illegal traffic in agricultural products, see "Agriculture," § 16.

Misapplication of funds by brokers, see "Brokers," § 5.

Obstruction of highway, see "Highways," § 164.

Practicing medicine without authority, see "Physicians and Surgeons," § 6.

Removal or transfer of mortgaged property by mortgagor, see "Chattel Mortgages," § 234.

Violation of banking laws, see "Banks and Banking," §§ 62, 257.  
 Violations of election laws, see "Elections," § 330.  
 Violations of health regulations, see "Health," § 42.  
 Violations of internal revenue laws, see "Internal Revenue," § 47.  
 Violations of license laws in general, see "Licenses," § 42.  
 Violations of liquor laws, see "Intoxicating Liquors," §§ 237-240.  
 Violations of municipal ordinances, see "Municipal Corporations," § 641.  
 Violations of postal laws, see "Post Office," § 50.  
 Violations of regulations relating to articles of food or drink, see "Food," § 22.  
 Violations of regulations relating to hawkers and peddlers, see "Hawkers and Peddlers," § 7.  
 Violations of Sunday laws, see "Sunday," § 29.

*Of motions or applications.*

In general, see "Motions," §§ 36, 37.  
 For appointment of administrator, see "Executors and Administrators," § 20.  
 For appointment of receiver, see "Receivers," § 40.  
 For change of venue, see "Criminal Law," §§ 135-137; "Venue," § 72.  
 For composition with creditors in bankruptcy, see "Bankruptcy," § 382.  
 For continuance, see "Continuance," § 48; "Criminal Law," §§ 609, 610.  
 For direction of verdict, see "Trial," § 178.  
 For discharge of bankrupt, see "Bankruptcy," § 415.  
 For dismissal or nonsuit, see "Dismissal and Nonsuit," § 73; "Trial," § 165.  
 For entry of judgment on award, see "Arbitration and Award," § 84.  
 For examination of party before trial, see "Discovery," § 56.  
 For injunction, see "Injunction," § 152.  
 For judgment on pleadings, see "Pleading," § 350.  
 For liquor license, see "Intoxicating Liquors," § 70.  
 For new trial, see "Criminal Law," § 959; "New Trial," § 157.  
 For publication of process, see "Process," § 97.  
 For revocation of discharge of bankrupt, see "Bankruptcy," § 417.  
 For revocation of license, see "Intoxicating Liquors," § 108.  
 For security for costs, see "Costs," § 116.  
 For summary judgment, see "Judgment," § 186.  
 In arrest of judgment, see "Criminal Law," § 974.  
 To amend or correct judgment, see "Judgment," § 325.  
 To open or vacate accounting by executor or administrator, see "Executors and Administrators," § 509.  
 To open or vacate execution sale, see "Execution," § 254.  
 To open or vacate judgment, see "Judgment," §§ 163, 393.

To open or vacate judicial sales in general, see "Judicial Sales," § 43.  
 To quash or set aside indictment or information, see "Indictment and Information," § 140.  
 To strike matter from pleading, see "Pleading," § 365.  
 To strike pleadings, see "Pleading," § 360.  
 To take depositions, see "Depositions," § 37.  
 To vacate or dissolve injunction, see "Injunction," § 175.

**HEARSAY.**

*Cross-Reference.*

As ground for suspicion authorizing arrest without warrant, see "Arrest," § 63.

**HEARSAY EVIDENCE.\***

*Cross-References.*

See "Criminal Law," §§ 419-421, 530; "Evidence," §§ 314-324.  
 Introduction before commissioners in admiralty suit, see "Admiralty," § 77.  
 Objection to testimony first raised on appeal, see "Appeal and Error," § 204.

**HEAT.\***

*Cross-Reference.*

Statute authorizing municipal heat plant, enactment, see "Statutes," § 26.

**HEAT OF PASSION.\***

*Cross-Reference.*

Element of manslaughter, see "Homicide," §§ 39, 40, 181, 239, 271, 295.

**HEDGES.\***

*Cross-References.*

See "Adjoining Landowners," § 5; "Fences," §§ 14-16, 26.

**HEIRLOOMS.**

*Cross-Reference.*

Passing with devise of realty, see "Wills," § 563.

**HEIRS.\***

*Cross-References.*

See "Descent and Distribution."  
 Absent heirs, distribution of estate of decedent, see "Executors and Administrators," § 303.  
 Absent heirs, representation by attorney or curator, see "Absentees," § 5.  
 Adopted children, see "Adoption," § 21.  
 Adverse possession by or against heirs, see "Adverse Possession," §§ 40, 41, 55, 62.  
 Adverse possession of lands, tacking successive possession, see "Adverse Possession," § 43.

\*Annotation: Words and Phrases, same title.

Agreement by one to make another his heir, see "Wills," §§ 56-68.  
 Assignment for creditors as including interest in estate of ancestor, see "Assignments for Benefit of Creditors," § 176.  
 Assignment of dower, see "Dower," § 68.  
 Assignment of expectancy, see "Assignments," § 8.  
 Assignment of interests of heirs of devisees, see "Assignments for Benefit of Creditors," § 176.  
 Assignments and transfers by heirs, see "Assignments," § 8.  
 Attachment in action against heirs for debts of decedent, see "Attachment," § 4.  
 Attachment of interests of heirs, see "Attachment," § 59.  
 Coheir acting as attorney for other heirs, see "Attorney and Client," § 72.  
 Construction as to cestui que trust, see "Trusts," § 124.  
 Continuity of adverse possession as affected by death of former owner, see "Adverse Possession," § 55.  
 Designation in assessment rolls, see "Taxation," § 416.  
 Designation in will, see "Wills," §§ 506, 507.  
 Execution upon interests of heirs, see "Execution," § 44.  
 Fixtures as between heirs and personal representative, see "Fixtures," § 11.  
 Garnishment of interests of heirs, see "Garnishment," § 35.  
 Hostile character of possession by or against heirs, see "Adverse Possession," § 62.  
 Inheritance by, from, or through adopted children, see "Adoption," §§ 21-24.  
 Inheritance by, from, or through bastards, see "Bastards," §§ 95-105.  
 Inheritance by or from aliens, see "Aliens," §§ 9, 10, 12.  
 Interests in estate as subject to attachment, see "Attachment," § 59.  
 Joinder of actions by heir, see "Action," § 38.  
 Joinder of causes against executor or administrator and heirs, see "Action," § 50.  
 Joint ownership as ground for accounting, see "Account," § 3.  
 Meaning of word "heirs" as used in marriage settlement, see "Husband and Wife," § 31.  
 Omission of words of inheritance from instrument creating trust, see "Trusts," § 130½.  
 Pleading facts or conclusions as to heirship, see "Pleading," § 8.  
 Presumptions as to adverse holding by executor who is also an heir, see "Adverse Possession," § 85.  
 Revival by or against heirs of action by or against ancestor, see "Abatement and Revival," §§ 72, 73.  
 Revival by substituting heir, see "Abatement and Revival," § 71.  
 Revival of appeal by heir on death of party, see "Appeal and Error," § 334.

Right of action for death of ancestor, see "Death," § 31.  
 Right of attorney for executors to represent heirs, see "Attorney and Client," § 20.  
 Right of heirs to recover funds held by attorney of ancestor's estate, see "Attorney and Client," § 118.  
 Right of heirs to set up statute of frauds, see "Frauds, Statute of," § 143.  
 Right of heir to be both plaintiff and defendant, see "Action," § 15.  
 Right of review by assignee of heir, see "Appeal and Error," § 150.  
 Rights and liabilities in settlement and distribution of ancestor's estate, see "Executors and Administrators."  
 Rights as to community and separate property, see "Husband and Wife," § 274.  
 Right to appeal from judgment against executor, see "Appeal and Error," § 877.  
 Tacking possession of ancestor and heir, see "Adverse Possession," § 43.  
 Time for action by heirs against adverse occupant of land, see "Adverse Possession," § 40.  
 Title by descent as color of title, see "Adverse Possession," § 78.  
 Use of term in deeds, see "Deeds," §§ 105, 123.  
 Use of words of inheritance in assignment for creditors, see "Assignments for Benefit of Creditors," § 54.  
 Validity of assignment to heirs of living person, see "Assignments," § 62.

### HELPLESS PERSONS.\*

#### Cross-Reference.

Negligence as to persons physically helpless, see "Negligence," § 8.

### HERBAGE.\*

#### Cross-References.

See "Crops."  
 Damages for injury in general, see "Damages," § 112.  
 Negligent burning in general, see "Negligence," § 21.  
 Negligent burning by fires set by railroad trains, see "Railroads," §§ 453-488.  
 Noxious weeds, see "Agriculture," § 8.  
 Trees, parking and other ornamentation of streets, see "Municipal Corporations," § 678.  
 Willful or malicious burning, see "Fires."

### HERD LAWS.\*

#### Cross-Reference.

See "Animals," §§ 50, 92.

### HERIDITAMENTS.\*

#### Cross-References.

See "Estates"; "Property."

\*Annotation: Words and Phrases, same title.

**HEREDITARY INSANITY.\****Cross-Reference.*

Evidence of in criminal prosecutions, see "Criminal Law," § 354.

**HERNIA.\****Cross-Reference.*

Accident insurance, see "Insurance," § 530.

**HIDDEN DANGERS.***Cross-Reference.*

Injuries to servant from, see "Master and Servant," § 122.

**HIDES.\****Cross-References.*

See "Customs Duties," § 37.  
Validity of acts relating to inspection of hides and animals, see "Animals," § 15.

**HIGHEST BIDDERS.\****Cross-References.*

At auction sale, see "Auctions and Auctioneers," § 7.  
At execution sale, see "Execution," §§ 229-239.  
At sale under order or decree of court, see "Executors and Administrators," §§ 366-373; "Judicial Sales," §§ 18-29.

**HIGHROADS.\****Cross-Reference.*

See "Highways."

**HIGH SCHOOLS.\****Cross-References.*

See "Schools and School Districts," §§ 9-177.  
Organization of high school districts, see "Schools and School Districts," § 42.  
Power to establish, see "Schools and School Districts," § 163.

**HIGH SEAS.\****Cross-References.*

See "Navigable Waters."  
Admiralty jurisdiction, see "Admiralty," § 4.  
Jurisdiction of offenses committed on high seas, see "Criminal Law," § 97.  
Necessity of allegation as to place of offense in indictment for murder on high seas, see "Homicide," § 132.  
Validity of marriage on high seas, see "Marriage," § 3.

**HIGH-WATER MARK.\****Cross-References.*

See "Boundaries," §§ 12-18; "Navigable Waters," §§ 36-46.

**HIGHWAY COMMISSIONERS.\****Cross-Reference.*

See "Highways," §§ 35-41, 50, 72, 77.

**HIGHWAY CROSSINGS.***Cross-Reference.*

See "Railroads," §§ 92-99, 242-245, 298-353, 410.

**HIGHWAY ROBBERY.***Cross-Reference.*

See "Robbery."

**HIGHWAYS.\****Scope-Note.*

[INCLUDES roads open for free passage to the public, established for public benefit; nature and scope of power to establish and maintain such roads in general; constitutional and statutory provisions relating thereto; appointment and removal, rights, powers, duties, and liabilities of highway boards, officers, etc.; establishment of such roads by statutory proceedings, construction, repair, and improvement thereof, and alteration, vacation, and abandonment thereof; taxes for highway purposes and local assessments for particular roads; title to and rights in the land occupied, and removal of and liabilities for obstructions, encroachments, etc.; and use of such roads, and liabilities for injuries from defects, obstructions, etc., therein, and for injuries from violations of the law of the road causing collisions, etc.

[EXCLUDES streets in incorporated cities, etc. (see "Municipal Corporations"); roads established by public authority for accommodation of private persons (see "Private Roads"); roads for passage over which tolls are taken (see "Turnpikes and Toll Roads"); bridges (see "Bridges"); dedication of lands to public use as highways (see "Dedication"); exercise of power of eminent domain (see "Eminent Domain");

\*Annotation: Words and Phrases, same title.

railways on or crossing highways (see "*Railroads*"; "*Street Railroads*") ; and highways as boundaries (see "*Boundaries*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

**I. Establishment, Alteration, and Discontinuance.**

(A) ESTABLISHMENT BY PRESCRIPTION, USER, OR RECOGNITION.

- § 1. Nature and essentials of highway by prescription.
- § 2. Constitutional and statutory provisions.
- § 3. Against whom prescription may be claimed.
- § 4. Land subject to prescription.
- § 5. Mode and extent of use.
- § 6. Duration and continuity of use.
- § 7. Adverse character of use in general.
- § 8. Claim or color of right to use.
- § 9. Use and recognition of pre-existing road or other way.
- § 10. Use where proceedings to establish highway defective.
- § 11. Operation and effect.
- § 12. — In general.
- § 13. — Character and use of highway.
- § 14. — Extent of highway.
- § 15. Ascertainment and entry of record of highway by user.
- § 16. Pleading existence of highway.
- § 17. Evidence as to existence of highway.

(B) ESTABLISHMENT BY STATUTE OR STATUTORY PROCEEDINGS.

- § 18. Nature and essentials of statutory highway.
- § 19. Constitutional and statutory provisions.
- § 20. Necessity and utility of road.
- § 21. Establishment by legislative act.
- § 22. Jurisdiction and powers of local authorities.
- § 23. — In general.
- § 24. — Roads in different jurisdictions.
- § 25. Establishment by ordinance or resolution of local authority.
- § 26. Amendment or repeal of statute pending proceedings.
- § 28. Parties.
- § 29. Petition or other application.
- § 30. Notice.
- § 31. Appearance and representation by attorney.
- § 32. Remonstrances or answers to petition.
- § 33. Conduct of proceedings on application in general.
- § 34. Dismissal of proceedings.
- § 35. Commissioners or viewers.
- § 36. — In general.
- § 37. — Appointment and qualifications.
- § 38. — Notice of proceedings.
- § 39. — Acts and proceedings in general.
- § 40. — View.
- § 41. — Report and proceedings thereon.

**I. Establishment, Alteration, and Discontinuance—Continued.****(B) ESTABLISHMENT BY STATUTE OR STATUTORY PROCEEDINGS—Continued.**

- § 42. Determination as to necessity and utility of road.
- § 43. Location of road.
- § 44. — In general.
- § 45. — Township or section lines.
- § 46. — Exemption of particular species of property.
- § 47. Width of road.
- § 48. Laying out road.
- § 49. — In general.
- § 50. — Proceedings of commissioners, viewers, or surveyors.
- § 51. — Consent of landowners.
- § 52. Determination of character of road.
- § 53. Judgment or order establishing road.
- § 54. Record of proceedings.
- § 55. Defects and objections and waiver thereof.
- § 56. Curative statutes.
- § 57. Appeal and error.
- § 58. — In general.
- § 59. — Hearing de novo.
- § 60. Certiorari to review proceedings.
- § 61. Costs and expenses of proceedings.
- § 62. Conclusiveness of decision.
- § 63. Collateral attack.
- § 64. Restraining opening of road.
- § 65. Operation and effect.
- § 66. — In general.
- § 67. — Character and use of highway.
- § 68. Pleading and evidence as to existence of highway.

**(C) ALTERATION, VACATION, OR ABANDONMENT.**

- § 69. Alteration of course, width, or grade.
- § 70. — In general.
- § 71. — Power to alter.
- § 72. — Proceedings.
- § 73. — Operation and effect.
- § 74. Vacation.
- § 75. — In general.
- § 76. — Power to vacate.
- § 77. — Proceedings.
- § 78. — Operation and effect.
- § 79. Abandonment.

**(D) TITLE TO FEE AND RIGHTS OF ABUTTING OWNERS.**

- § 80. Title to fee in general.
- § 81. Reversion on discontinuance of highway.
- § 82. Deviation of travel from impassable highway to adjoining land.
- § 83. Rights as to use of soil of highway.
- § 84. Lateral support.
- § 85. Right of access.
- § 86. Right to use of road.

**I. Establishment, Alteration, and Discontinuance—Continued.****(D) TITLE TO FEE AND RIGHTS OF ABUTTING OWNERS—Continued.**

- § 87. Rights and remedies as to obstructions and injuries to road.
- § 88. Use of highway for other public purposes.
- § 89. Use of highway for other purposes by abutting owner.

**II. Highway Districts and Officers.**

- § 90. Creation and existence of districts.
- § 91. Creation and organization of road boards.
- § 92. Creation and abolition of offices.
- § 93. Appointment, qualification, and tenure of officers.
- § 94. Compensation and expenses.
- § 95. Authority, powers, and proceedings.
- § 96. Duties and liabilities.
- § 97. Liabilities on official bonds.

**III. Construction, Improvement, and Repair.**

- § 98. Necessity for opening and construction.
- § 99. Authority and duty to construct.
- § 99 $\frac{1}{4}$ . Highway funds.
- § 99 $\frac{1}{2}$ . Existence and character of road.
- § 100. Compelling opening and construction.
- § 101. Proceedings to open in general.
- § 102. Removal of fences and buildings.
- § 103. Mode and plan of construction or improvement in general.
- § 104. Mode of making alterations.
- § 105. Authority and duty to maintain and repair.
- § 106. Compelling improvement or repair.
- § 107. Proceedings for improvement of highways and for construction of free gravel roads or turnpikes.
- § 108. Criminal responsibility for failure to maintain or repair.
- § 109. Materials for construction or repair.
- § 110. Appliances and machinery for construction and repair.
- § 111. Work of construction or repair.
- § 112. — In general.
- § 113. — Contracts.
- § 114. Damages from construction or repair.
- § 115. — In general.
- § 116. — Deduction or set-off of benefits.
- § 117. Liabilities for expenses or damages.
- § 118. — In general.
- § 119. — Apportionment.
- § 120. Drainage.

**IV. Taxes, Assessments, and Work on Highways.**

- § 121. Power of taxation and assessment in general.
- § 122. Constitutional and statutory provisions.
- § 123. Highway taxes.
- § 124. — Purposes and grounds in general.

**IV. Taxes, Assessments, and Work on Highways—Continued.**

- § 125. — Amount of tax.
- § 126. — Persons and property liable.
- § 127. — Levy and assessment.
- § 128. — Payment, collection, and enforcement.
- § 129. — Remedies for erroneous taxation.
- § 130. — Disposition of proceeds.
- § 131. Local assessments and special taxes.
- § 132. — Purposes in general.
- § 134. — Consent of landowners.
- § 135. — Amount of assessment.
- § 136. — Property liable and amount of benefit.
- § 137. — Objections and estoppel or waiver.
- § 138. — Proceedings for assessment.
- § 139. — Mode of assessment in general.
- § 140. — Apportionment of benefits and expenses.
- § 141. — Certificate for work done against specific property.
- § 142. — Confirmation, correction, or setting aside.
- § 143. — Curative statutes.
- § 144. — Reassessment or additional assessment.
- § 145. — Lien.
- § 146. — Payment and recovery of assessment paid.
- § 147. — Collection and enforcement.
- § 148. — Remedies for wrongful enforcement.
- § 149. — Disposition of proceeds.
- § 150. Poll taxes.
- § 151. Work on road by taxpayers.

**V. Regulation and Use for Travel.****(A) OBSTRUCTIONS AND ENCROACHMENTS.**

- § 153. Obstruction of use of highway in general.
- § 154. Buildings or other structures encroaching on highway.
- § 155. Persons entitled to remedies.
- § 156. Persons liable for obstruction or encroachment.
- § 157. Removal.
- § 158. Abatement.
- § 159. Injunction.
- § 160. Actions for damages.
- § 161. Actions for penalties.
- § 162. Criminal responsibility.
- § 163. — Offenses.
- § 164. — Prosecution and punishment.

**(B) USE OF HIGHWAY AND LAW OF THE ROAD.**

- § 165. Power to control and regulate.
- § 166. Statutory and local regulations.
- § 167. Right to use.
- § 168. — In general.
- § 169. — Motor vehicles and bicycles.
- § 170. Character and control of horses.



**V. Regulations and Use for Travel—Continued.****(B) USE OF HIGHWAY AND LAW OF THE ROAD—Continued.**

- § 171. Care required in use of highway.
- § 172. — In general.
- § 173. — As to persons on foot.
- § 174. — As to children and others under disability.
- § 175. Meeting and crossing.
- § 176. Overtaking and passing.
- § 177. Excessive speed and racing.
- § 178. Approaching railroad.
- § 179. Stopping and standing.
- § 180. Horses or other animals not under control, and runaways.
- § 181. Frightening animals.
- § 182. Injuries to highways.
- § 183. Liabilities for injuries.
- § 184. Actions for injuries.
- § 185. Penalties for violations of regulations.
- § 186. Offenses incident to travel.

**(C) INJURIES FROM DEFECTS OR OBSTRUCTIONS.**

- § 187. Nature and grounds of liability.
- § 188. Care required as to condition of highway.
- § 189. Statutory provisions.
- § 190. Duty and ability to repair.
- § 191. Sufficiency and safety of highway in general.
- § 192. Defects or obstructions causing injury.
- § 193. Notice of defects or obstructions.
- § 194. Precautions against injury.
- § 195. Failure to prevent or remove obstruction.
- § 196. Proximate cause of injury.
- § 197. Contributory negligence of person injured.
- § 198. Liabilities of local authorities and officers.
- § 199. Liabilities of abutting owners.
- § 200. Liabilities of persons causing defects or obstructions.
- § 201. Actions for injuries.
- § 202. — Grounds and conditions precedent in general.
- § 203. — Notice of claim for injury.
- § 204. — Defenses.
- § 205. — Jurisdiction and venue.
- § 206. — Time to sue and limitations.
- § 207. — Parties.
- § 208. — Pleading.
- § 209. — Presumptions and burden of proof.
- § 210. — Admissibility of evidence.
- § 211. — Sufficiency of evidence.
- § 212. — Damages.
- § 213. — Questions for jury.
- § 214. — Instructions.
- § 215. — Verdict and findings.
- § 216. — Appeal and error.

*Cross-References.*

See "Bridges"; "Navigable Waters," §§ 1-35; "Private Roads"; "Turnpikes and Toll Roads."  
 Additional servitude, in highway, see "Eminent Domain," § 119.  
 As boundaries, see "Boundaries," §§ 20-23.  
 Care required of property owners as to persons on adjacent highway, see "Negligence," § 35.  
 Carrying weapons on highway, see "Weapons," § 9.  
 Character of canal as highway, see "Canals," § 2.  
 Character of ferry as highway, see "Ferries," § 4.  
 Character of railroad as public highway, see "Railroads," § 4.  
 Condemnation of highway, see "Eminent Domain," § 46.  
 Condemnation of land for highway as taking for public use, see "Eminent Domain," § 19.  
 Conflicting grants of rights in highways to electric companies, see "Electricity," § 5.  
 Consent of highway officers to use of highway by street railroad, see "Street Railroads," § 25.  
 Construction and maintenance of highways as taking of property without due process of law, see "Constitutional Law," § 291.  
 Construction of drains in highways, see "Drains," § 45.  
 Crossing by railroads, see "Railroads," §§ 93-99.  
 Dedication of land for highway, see "Dedication."  
 Delegation of legislative power to lay out and improve highways, see "Constitutional Law," § 60.  
 Duty of railroad company to fence tracks near highways, see "Railroads," § 411.  
 Establishment of boundaries of highway, see "Boundaries," § 27.  
 Injuries to highway by drain, see "Drains," § 57.

Judicial notice in criminal prosecution as to condition of road, see "Criminal Law," § 304.  
 Judicial notice of road laws, see "Criminal Law," § 304.  
 Liability for injuries to laborer engaged in repair of highway, see "Master and Servant," § 88.  
 Logging roads, see "Logs and Logging," § 8.  
 Measure and amount of compensation for appropriation of highway for public use, see "Eminent Domain," § 127.  
 Occupation or use of highway as ground for compensation to abutting owners, see "Eminent Domain," §§ 100, 104, 119.  
 Reservation in patent from state, see "Public Lands," § 163.  
 Right of railway company to construct road near highway, see "Railroads," § 44.  
 Rights in and use of highways by railroads, see "Railroads," §§ 75-79.  
 Rights in and use of highways by street railroads, see "Street Railroads," §§ 22-26, 28-30.  
 Rights in and use of highways by telegraph or telephone companies, see "Telegraphs and Telephones," § 10.  
 Robbery near highway, see "Robbery," § 11.  
 Shooting on highways, see "Weapons," § 15.  
 Special or local laws for establishment and regulation of highways, see "Statutes," § 97.  
 Streets in cities, see "Municipal Corporations," §§ 646-707.  
 Subjects and titles of acts relating to highways, see "Statutes," § 123.  
 Use of highway by turnpike company, see "Turnpikes and Toll Roads," § 14.  
 Validity of act authorizing state aid for construction of highways, see "States," § 119.  
 Working convicts on highways, see "Convicts," § 7.

## I. ESTABLISHMENT, ALTERATION, AND DISCONTINUANCE.

### *Cross-Reference.*

Dedication, see "Dedication."

### (A) ESTABLISHMENT BY PRESCRIPTION, USER, OR RECOGNITION.

#### *Cross-References.*

Instructions in prosecution for obstruction of highway, see post, § 164.  
 Acquisition by adverse possession of rights in land used as highway, see "Adverse Possession," § 8.  
 Construction of findings, see "Trial," § 365.  
 Crossing over railroad, see "Railroads," § 300.

Liability of abutting owner for injury to person in highway dependent on existence of highway by user, see "Negligence," § 35.  
 Streets in cities, see "Municipal Corporations," § 648.  
 User as constituting acceptance of dedication, see "Dedication," § 37.

### § 1. Nature and essentials of highways by prescription.

#### *Annotation.*

Public easement acquired by prescription.—11 L. R. A. 55, note.

### § 2. Constitutional and statutory provisions.

#### *Cross-Reference.*

Subject and title of act, see "Statutes," § 120.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

§§ 3-5. (See Analysis.)

**§ 6. Duration and continuity of use.**

(a) Evidence of an uninterrupted user by the public for 20 years is sufficient to establish the existence of a public way.—*Thomas v. Ford*, 63 Md. 346, 52 Am. Rep. 513. [Cited and annotated in 48 L. R. A. (N. S.) 470, on permissive user constituting dedication of wharf or landing.]

§§ 7-16. (See Analysis.)

**§ 17. Evidence as to existence of highway.**

(a) A plea of right of public way over certain land may be sustained by evidence of uninterrupted user by the public for 20 years, and the jury may infer from the circumstances attending the user that the way was a public highway by long or immemorial usage.—*Day v. Allender*, 22 Md. 511.

**(B) ESTABLISHMENT BY STATUTE OR STATUTORY PROCEEDINGS.**

*Cross-References.*

Injury to revenues of turnpike company by opening of public highway, see "Turnpikes and Toll Roads," § 26.  
Mandamus to control, see "Mandamus," §§ 15, 98.  
Private roads, see "Private Roads," § 2.  
Right to jury trial in condemnation proceeding, see "Jury," § 19.  
Streets in cities, see "Municipal Corporations," § 649.

**§ 18. Nature and essentials of statutory highway.**

**§ 19. Constitutional and statutory provisions.**

*Cross-References.*

Acts conferring nonjudicial duties on court, see "Constitutional Law," § 74.  
Persons entitled to raise question of constitutionality, see "Constitutional Law," § 42.  
Special legislation, see "Statutes," § 97.  
Subject and title of acts, see "Statutes," § 123.  
Uniformity of operation of laws, see "Statutes," § 97.

(a) Act 1904, p. 388, c. 225, § 2, providing that, on the petition of two-thirds of the owners of the land abutting on a public road, the county commissioners shall request the state geological and economic survey for plans and estimates of the costs for the construction and improvement of the roads in

the county, is not repugnant to § 15, providing that nothing in the act shall be taken to alter or affect the present method of road construction or repair by several counties at their own expense, or otherwise, as now authorized by law.—*Fout v. Frederick County Com'rs*, 105 Md. 545, 66 Atl. 487. (See Code, art. 91, §§ 33, et seq.; Id. [vol. 3], §§ 33A, et seq.)

**§ 20. Necessity and utility of road.**

**§ 21. Establishment by legislative act.**

**§ 22. Jurisdiction and powers of local authorities.**

*Cross-References.*

Proceedings for construction of free gravel roads, see post, § 107.  
To alter highway, see post, § 71.  
To vacate highway, see post, § 76.

**§ 23.— In general.**

(a) Under Code, art. 25, § 12, expressly empowering the county commissioners to open roads, and art. 5, § 84, giving the right of appeal to the Circuit Court for the county, the jurisdiction of such court when it has once properly attached is exclusive.—*Jay v. Harford County Com'rs*, 120 Md. 49, 87 Atl. 521.

(b) The powers of county commissioners to open and close public roads are regulated by statute, and the jurisdiction conferred, being special and limited, must be administered according to the law creating it.—*Cumberland Valley R. Co. v. Martin*, 100 Md. 165, 59 Atl. 714. (See Code, art. 25, § 12.)

(c) Act 1827, c. 81, confers upon the county commissioners all the power which they possess in relation to public roads, and gives them the same jurisdiction which the levy court before had.—*Barrickman v. Harford County Com'rs*, 11 G. & J. 50. (See Code, art. 25, §§ 1, et seq.; Id. [vol. 3], art. 25, §§ 1, et seq.; act 1916, c. 260, p. 531; c. 263, p. 539; c. 394, p. 794.) [Cited and annotated in 26 L. R. A. 758, on mitigation of damages in eminent domain by preserving estate, rights, or easements to owner.]

(d) Under act 1821, c. 152, the levy court of Baltimore county has jurisdiction and power of opening a new road, or of altering or vacating an old road.—*Williamson v. Carman*, 1 G. & J. 184. (See Code, art. 25, §§

1, et seq.; Id. [vol. 3], art. 25, §§ 1, et seq.)

**§ 24.—Roads in different jurisdictions.**

*Cross-References.*

Apportionment of expenses of maintenance, see post, § 119.

Authority and duty to maintain and repair, see post, § 105.

Power to discontinue road between adjoining townships, see post, § 76.

**§ 25. Establishment by ordinance or resolution of local authority.**

**§ 26. Amendment or repeal of statute pending proceedings.**

(a) Act 1870, c. 309, a public local law relating to roads in Baltimore county, requires the county commissioners, when objections are filed to the action of the board of road supervisors, to issue their warrant to the sheriff directing him to summon a jury to meet on the premises to hear and determine the question of damages, etc. Act 1874, c. 274, repeals act 1870, c. 309, and contains no saving clause in favor of proceedings which were in fieri and incomplete under the prior act, or any re-enactment by which proceedings can be supplemented, so as to render what had already been done complete and final. *Held*, that, where proceedings under the prior act had been commenced and a warrant to the sheriff to summon a jury had been issued, but nothing further had been done when the latter act took effect, the road supervisors and county commissioners had no authority to proceed any further.—*Wade v. St. Mary's Industrial School*, 43 Md. 178. [Cited and annotated in 37 L. R. A. (N. S.) 935, on effect of repeal of civil statute pending motion for new trial or appeal from judgment based thereon.]

**§ 27. (Omitted from the classification used herein.)**

**§ 28. Parties.**

*Cross-References.*

Conclusiveness of judgment of commissioners' court as to qualifications of petitioners, see post, § 58.

To petition for vacation of highway, see post, § 77.

**§ 29. Petition or other application.**

*Cross-References.*

Alteration of highway, see post, § 72.

Bond by petitioners for expenses of proceedings, see post, § 61.

Collateral attack, see post, § 63.

For improvement of highway, see post, § 107.

Jurisdiction to alter and widen road on petition to lay out new road, see post, § 72.

Petition for election on proposition to improve highway, see post, § 107.

Vacation of highway, see post, § 77.

(a) Code 1888, art. 25, §§ 83-85, provide that applications for opening roads shall be by petition to the county commissioners; that, when any citizen intends to petition the commissioners to open a road, he shall give 30 days' notice in a newspaper; and that counter petitions may be presented. *Held*, that, where certain persons are named as the petitioners in the opening and closing paragraphs of a petition for opening a road, which is not signed by them, and they adopt it as their petition through proceedings before the commissioners and in the Circuit Court, and the objectors, who are represented by counsel in such proceedings, raise no objection to the petition because it is not signed until after appeal to the Circuit Court, the commissioners and the Circuit Court have jurisdiction.—*Smith v. Goldsborough*, 80 Md. 49, 30 Atl. 574; *Albaugh v. Same*, Id. (See Code 1911, art. 25, §§ 88-90.)

(b) The power of amendment is very comprehensive, but it should not be construed to extend to allowing the original petition for the opening of a road to be amended in those particulars upon which the original jurisdiction of the county commissioners depends, after the case has been removed into the Circuit Court by appeal—*Shuey v. Stoner*, 47 Md. 167.

(c) County commissioners cannot open, alter, change, or close a road but on the application, in writing, of citizens of the county.—*Barrickman v. Harford County Com'rs*, 11 G. & J. 50. [Cited and annotated in 26 L. R. A. 758, on mitigation of damages in eminent domain by preserving estate, rights, or easements to owner.]

**§ 30. Notice.**

*Cross-References.*

Collateral attack, see post, § 63.

Necessity and sufficiency of showing in record of proceedings, see post, § 54.

Of proceedings to alter highway, see post, § 72.

Of proceedings to vacate highway, see post, § 77.

Statutes curing want of or irregularity in notice, see post, § 56.

(a) Where notice to all persons interested in the opening or widening of any street has been duly given by publication, as required by the act of 1888, c. 226, conferring certain powers on the corporate authorities of the city of Baltimore, ignorance thereof in any party can afford him no ground for relief either in equity or by appeal to the City Court. The law imputes notice, and will not admit testimony to disprove it.—*Methodist Protestant Church v. City of Baltimore*, 6 Gill 391, 48 Am. Dec. 540. [Cited and annotated in 22 L. R. A. (N. S.) 112, 113, 114, on judicial power over eminent domain.]

§§ 31-34. (See Analysis.)

§§ 35-41. Commissioners or viewers.

*Cross-References.*

Collateral attack on proceedings for want of notice, see post, § 63.

In proceedings to alter highway, see post, § 72.

In proceedings to vacate highway, see post, § 77.

Necessity and sufficiency of showing notice in record of proceedings, see post, § 54.

Notice of proceedings to alter highway, see post, § 72.

Notice of proceedings to vacate highway, see post, § 77.

Proceedings on holidays, see "Holidays," § 6.

(a) Under Code 1888, art. 25, § 86, providing that whenever the county commissioners shall deem it expedient to appoint viewers for the purpose of opening a road they shall appoint three persons as examiners, who shall be freeholders in the county, and not interested nor holding lands through which the road is proposed to be opened, the appointment of examiners who do not appear on the face of the proceedings to be disinterested freeholders not holding lands through which the road is proposed to be opened renders the proceedings of the commissioners in opening the road void.—*Cumberland Valley R. Co. v. Martin*, 100 Md. 165, 59 Atl. 714. (See Code 1911, art. 25, § 91.)

(b) Under Code 1888, art. 25, § 86, authorizing the county commissioners to appoint examiners in proceedings to establish a public road, the court exceeded its jurisdiction

in appointing such examiners.—*Gist v. Owings*, 95 Md. 302, 52 Atl. 395. (See Code 1911, art. 25, § 91.)

§ 42. Determination as to necessity and utility of road.

*Cross-Reference.*

See post, § 44.

§ 43. Location of road.

*Cross-References.*

Alterations, see post, §§ 70-73.

Of turnpike or toll road, see "Turnpikes and Toll Roads," §§ 13, 14.

§ 44.—In general.

(a) Under act 1900, p. 1086, c. 685, §§ 205-207, providing that applications for opening, altering, or closing roads in Baltimore county shall be by petition to the county commissioners, and requiring the petitioners to give a prescribed notice, setting forth, "as near as may be," the length and location of the road, the petition and notice need not describe with precision the location and length of the road in question, but need only state those matters substantially; and a variation of a few degrees in courses, and of some feet in distances, between the road as finally located and as originally described in the notice and petition, does not render the proceedings fatally defective, or affect the jurisdiction of the commissioners.—*Jenkins v. Riggs*, 100 Md. 427, 59 Atl. 758.

(b) A notice of the opening of a new road described it as running south on the division line between the lands of certain property owners about 1,100 feet, "until it crosses the branch, then taking an easterly course about 1,600 feet to" a certain station. *Held*, that the fact that the road, as actually laid out, did not run due south, was an immaterial variance.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762.

(c) And the road as actually laid out did not run directly to the station, but it did go to another county road, on which the station was located. It appeared that the road could not go directly to the station without crossing a lot conveyed to a railroad company prior to the commencement of the proceedings. *Held*, an immaterial variance.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762.

(d) Where a notice of the opening of a new road described it as running with a northerly

course across the property of a certain person, the fact that it ran, as actually laid out, 5 deg. 50 min. west of north, is an immaterial variance.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762.

(e) So, also, the fact that the road, as actually laid out, ran on the division line 1,328 feet, and on the easterly course 1,522½ feet, was an immaterial variance.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762.

(f) Where a notice of the opening of a new road described its length as about 1,300 feet, the fact that, as laid out, its actual length was 117½ feet less, was an immaterial variance.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762.

(g) Act 1892, c. 426, § 95a, applicable to Frederick county, provides that if the commissioners determine that the public convenience of the community requires the opening of a new public road, but that such convenience would be better served by adopting a somewhat different location from that named in the petition, they shall cause a survey and plat of the proposed road to be made on "such location or route as in their judgment will best promote the public convenience." Held, that the commissioners' record showed a compliance with such statute where it showed that they viewed the locality, had a survey and plat made, and determined that the public convenience of the community would be better served by the adoption of a somewhat different location from that named in the petition, and that such convenience "does require that the said new public road, as laid down on said survey and plat" shall be opened, etc.—*Smith v. Goldsborough*, 80 Md. 49, 30 Atl. 574; *Albaugh v. Samé*, Id.

(h) Under act 1822, c. 18, the county commissioners had authority to open, on petition, any new road which in their opinion would conduce to the advantage and convenience of the public; and, whether a supervisor is appointed or not, a road opened from a common thoroughfare by virtue of that authority is a public road in contemplation of the act, even if it does not connect with another highway, nor lead to a mill, market, or church.—*State v. Price*, 21 Md. 448. (See Code, art. 25, §§ 88, et seq.)

(i) Act 1803, c. 89, giving highway commissioners authority to lay out a road in the best and straightest direction, providing they should not run through buildings, yards, orchards, or meadows, without the consent of the owner, did not limit them from locating the road over a mill race.—*Worthington v. Bicknell*, 1 Bland 186, note. (See Code, art. 25, §§ 88, et seq.)

§ 45.—Township or section lines.

§ 46.—Exemption of particular species of property.

*Cross-Reference.*

Railroad property, see "Railroads," § 96.

(a) Code 1888, art. 25, providing for the acquisition of lands for the establishment of public roads by contract and by condemnation proceedings, does not relate to lands already in the possession of the county, the mode of procedure being manifestly inapplicable to such lands, and hence does not authorize the construction of a road thereover.—*Gist v. Owings*, 95 Md. 302, 52 Atl. 395. (See Code 1911, art. 25, §§ 88, et seq.)

(b) Code 1888, art. 25, providing the procedure for the establishment of a public road, in which the county commissioners are required to pass judgment on the return of the examiners and give judgment against the petitioners for the costs incurred by persons objecting, when the case is decided in their favor, does not confer power to open roads through lands already owned by the county, but only the lands owned by others, as the county commissioners are required to do acts utterly inconsistent with their being interested parties.—*Gist v. Owings*, 95 Md. 302, 52 Atl. 395. (See Code 1911, art. 25, §§ 88, et seq.)

(c) Act 1898, c. 257, § 1, authorizing the county commissioners, after acquiring title to a turnpike road therein mentioned, to construct a public road, "the acclivity and declivity" of which should "in no case exceed six feet in the hundred," did not preclude the commissioners from establishing a less incline, whenever, in their discretion, the public necessities so required.—*Offutt v. Commissioners of Montgomery County*, 94 Md. 115, 50 Atl. 419.

**§ 47. Width of road.***Cross-References.*

Alteration, see post, §§ 70-73.

Evidence, see post, § 68.

**§§ 48-51. Laying out road.***Cross-References.*

Failure to open road as abandonment thereof, see post, § 79.

Notice of laying out, necessity of showing in prosecution for obstruction of highway, see post, § 163.

(a) The Code of 1888, authorizes county commissioners to open and change public roads, and provides for the appointment of examiners, whose report must be ratified by the commissioners. From the judgment of the commissioners an appeal lies to the Circuit Court. Art. 25, § 91, provides that no public road shall be opened or altered so as to pass through the "buildings, gardens, yards" of any person without his consent in writing. *Held*, that a judgment of the commissioners, ratifying the alteration of a road so as to make it pass through plaintiff's front yard, and from which judgment no appeal was taken, was not a bar to an action of trespass, where the records failed to show that plaintiff had given his consent to the change in writing.—*Winchester v. Cecil County Com'rs*, 78 Md. 266, 27 Atl. 1075. (See Code 1911, art. 25, § 96.)

**§ 52. Determination of character of road.****§ 53. Judgment or order establishing road.***Cross-References.*

In proceedings to alter highway, see post, § 72.

In proceedings to vacate highway, see post, § 77.

Conferring jurisdiction by consent to vacate judgment refusing to open highway, see "Courts," § 24.

**§ 54. Record of proceedings.***Cross-Reference.*

See ante, §§ 48-51.

**§ 55. Defects and objections and waiver thereof.***Cross-References.*

Objection to acts and proceedings of view-ers in general, see ante, § 39.

Objections to eligibility of commissioners, see ante, § 37.

Objections to notice of application, see ante, § 30.

Objections to notice of view, see ante, § 38.

Objections to remonstrance, see ante, § 32.

Waiver of objections by appearance, see ante, § 31.

**§ 56. Curative statutes.**

(a) Act 1876, c. 101, providing for the completion of Wilkins avenue in Baltimore county, was a curative law, and not within the prohibition contained in Const. art. 3, § 33, that the General Assembly shall pass no special law for any case for which provision has been made by the existing law.—*O'Brian v. Baltimore County Com'rs*, 51 Md. 15.

**§ 57. Appeal and error.***Cross-References.*

Constitutionality of statute failing to provide for appeal, see ante, § 19.

In proceedings for improvement of highway, or for construction of free gravel roads or turnpikes, see post, § 107.

In proceedings to vacate highway, see post, § 77.

Repeal of statute, see ante, § 19.

Abandonment of appeal from order of county board, see "Counties," § 58.

Compelling amended return by commissioners pending appeal from county court, see "Appeal and Error," § 440.

Prohibiting entertainment of appeal from order establishing, see "Prohibition," § 3.

Restraining appeal, see "Injunction," § 27.

**§ 58.— In general.**

(a) A judgment of the Circuit Court on appeal from the county commissioners in proceedings to open a public road under Code 1888, art. 25, § 83, is conclusive if the county commissioners acted within their jurisdiction, and no right of appeal to the Court of Appeals is given by the statute; but, if the county commissioners exceed their statutory jurisdiction, an appeal to the Court of Appeals lies from the judgment of the Circuit Court affirming the action of the commissioners.—*Cumberland Valley R. Co. v. Martin*, 100 Md. 165, 59 Atl. 714. (See Code 1911, art. 25, § 88.)

(b) Under Rev. Code 1878, art. 71, § 90, providing that no appeal shall lie from the judgment of the Circuit Court on appeal from establishment of a road by the county commissioners, a writ of error does not lie to the Circuit Court.—*Greenland v. Harford County Com'rs*, 68 Md. 59, 11 Atl. 581. (See Code 1911, art. 5, § 85.)

(c) An appeal lies from the decisions of the commissioners of Baltimore county, in regard to the opening and shutting up of roads, to Baltimore County Court; but no appeal lies to the Court of Appeals from the decisions of said County Court in such cases.—*Webster v. Cockey*, 9 Gill 92.

(d) If no right of appeal had been conferred on the County Court, then its judgments, unwarrantably pronounced on the subject, might by appeal be reviewed and reversed in the Court of Appeals.—*Webster v. Cockey*, 9 Gill 92.

(e) Where an application is made to the County Court to open a road, and the court orders the road to be opened, an appeal will not lie from such decision.—*Savage Mfg. Co. v. Owings*, 3 Gill 497.

#### § 59.—Hearing de novo.

(a) Where county commissioners have no jurisdiction in opening a public road because of their failure to act in conformity with Code 1888, art. 25, § 86, prescribing the qualifications of examiners, the Circuit Court on appeal from their action is without jurisdiction to enter a judgment validating the proceedings.—*Cumberland Valley R. Co. v. Martin*, 100 Md. 165, 59 Atl. 714. (See Code 1911, art. 25, § 91.)

#### § 60. Certiorari to review proceedings.

(a) On certiorari to review the proceedings of county commissioners in opening a road, it appeared, not only that legal notice of the proceedings was given, but that the petitioner for the writ filed a protest against the opening of the road. *Held*, that the commissioners had jurisdiction, and that subsequent irregularities must be taken advantage of by appeal.—*Gaither v. Watkins*, 66 Md. 576, 8 Atl. 464.

#### § 61. Costs and expenses of proceedings.

#### § 62. Conclusiveness of decision.

##### Cross-Reference.

Conclusiveness of determination as to necessity or utility of road, see ante, § 42.

#### § 63. Collateral attack.

##### Cross-Reference.

On proceedings for construction of free gravel road, see post, § 107.

(a) After the final ratification of the return of commissioners appointed to lay out a road, the proceedings cannot be collaterally impeached.—*Tyson v. Baltimore County Com'rs*, 28 Md. 510.

#### § 64. Restraining opening of road.

##### Cross-References.

Restraining construction of free gravel roads, see post, § 107.

Jurisdiction of courts of limited or inferior jurisdiction of petition to restrain opening of road, see "Courts," § 183.

#### §§ 65-67. Operation and effect.

##### Cross-Reference.

Right to use highway, see post, §§ 168-171.

#### § 68. Pleading and evidence as to existence of highway.

##### Cross-References.

Establishment by prescription or user, see ante, § 17.

Best and secondary evidence as to existence or location, see "Evidence," § 158.

Competency of witness, see "Witnesses," § 35.

General reputation, see "Evidence," § 302.

(a) Upon the question whether a road was a public highway, in an action for damages for injury to the plaintiff's milldam by the erection of a wall on the side of the road by county commissioners, an act of the Legislature recognizing the road as a highway, together with proof that a person under whom the plaintiff claims title was cognizant of the application to the Legislature for the passage of the act, and subsequently acted under it as commissioner, is admissible in evidence.—*Tyson v. Baltimore County Com'rs*, 28 Md. 510.

#### (C) ALTERATION, VACATION, OR ABANDONMENT.

##### Cross-References.

Private roads, see "Private Roads," §§ 3, 4.

Streets in cities, see "Municipal Corporations," §§ 655-657.

Sufficiency of warrant for town meeting to vote on discontinuance or alteration of highway, see "Towns," § 20.

Vacation of plats, see "Municipal Corporations," § 43.

#### § 69. Alteration of course, width, or grade.

##### Cross-References.

Mode of making alterations, see post, § 104.



Alteration of grade as ground for compensation to abutting owners, see "Eminent Domain," § 101.

At railroad crossing, see "Railroads," § 97.

#### § 70.— In general.

#### § 71.— Power to alter.

(a) The levy court is the only tribunal that can adjudicate on the question whether the public convenience requires an alteration in a public road.—*Williamson v. Carnan*, 1 G. & J. 184.

#### § 72.— Proceedings.

(a) Under Code, art. 25, §§ 1, 2, 12, giving the county commissioners control over all public roads in their respective counties, and conferring upon them power to open, alter, or close roads, the jurisdiction of the county commissioners in the opening, altering, or closing of roads, when it once properly attaches, is exclusive.—*Jenkins v. Riggs*, 100 Md. 427, 59 Atl. 758. (See Code 1911, art. 25, §§ 1, 2, 12; *Id.* [vol. 3], art. 25, § 2A; act 1916, c. 260, p. 531; c. 263, p. 539; c. 394, p. 794.)

(b) Under act 1900, c. 685, §§ 205-213, 215, pp. 1086-1089, providing that applications for opening, altering, or closing roads in Baltimore county shall be by petition to the county commissioners, and requiring the petitioners to give a notice setting forth the length and location of the proposed road, and authorizing the filing of counter petitions, and the determination of the merits of the case by the county commissioners, and prescribing the subsequent proceedings, the jurisdiction of the commissioners attaches upon the giving of the notice and filing of the petition.—*Jenkins v. Riggs*, 100 Md. 427, 59 Atl. 758.

(c) Where county commissioners act within their jurisdiction in the closing of old roads and opening of new ones, the adequacy of the new roads as substitutes for the old, and the fitness of the new roads for travel, and the benefit resulting to the taxpayers, from the change, are matters for their determination; and errors or irregularities in their proceedings are reviewable only upon appeal, in accordance with the statute, and are not a proper foundation for a bill in equity.—*Jenkins v. Riggs*, 100 Md. 427, 59 Atl. 758.

(d) The levy court of Baltimore county has no authority to open, amend, alter, widen, or straighten a road without giving the notice required by the statute of 1794.—*Williamson v. Carnan*, 1 G. & J. 184. (See Code, art. 25, § 89.)

(e) The Court of Appeals has no authority to review the judgment of the levy court as to the fact whether public convenience requires the alteration of a public road.—*Williamson v. Carnan*, 1 G. & J. 184.

#### § 73.— Operation and effect.

#### § 74. Vacation.

##### Cross-Reference.

Compensation or damage to abutting owners, see "Eminent Domain," § 100.

#### § 75.— In general.

##### Annotation.

Vacation of highway by acts of public authorities.—26 L. R. A. 821, note.

(a) Where proceedings were brought by the proprietor of a farm, under act 1900, pp. 1086-1089, c. 685, §§ 205-213, 215, for the closing of a portion of an old road, and the opening of new roads in its place and stead, it was proper for the county commissioners to agree with the proprietor that the old road should be closed through his farm in consideration of his conveying to them the land for the new ones.—*Jenkins v. Riggs*, 100 Md. 427, 59 Atl. 758.

(b) Code 1888, art. 25, § 12, grants the county commissioners power to open, alter, or close any public road in their respective counties; and the local laws of Baltimore county (act 1900, p. 1086, c. 685, § 205) provide that all applications for opening, altering, or closing roads shall be by petition to the county commissioners. An agreement by the commissioners of Baltimore county with a property owner provided that on "the opening of the two new roads applied for, and on their being constructed, graded, and bridged to the satisfaction of the roads engineer," and on the execution to the board of a deed, the new roads should be accepted as county roads, and that the old road should be closed and reconveyed to the original proprietor. *Held*, that the fact that the roads were to be constructed to the satisfaction of the roads engineer did not invali-

date the agreement, in view of Code, art. 25, § 1, providing that the commissioners may commit the whole matter of grading and constructing public roads to educated civil engineers, and act 1900, p. 1083, c. 685, § 196, providing that the roads engineer shall be a man having the degree of civil engineer, and experienced in bridge and road building.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762. (See Code 1911, art. 25, §§ 1, 12.)

(c) The agreement was also valid under the local laws of Baltimore county (act 1900, p. 1086, c. 685, § 208), expressly authorizing the county commissioners, when they deem it expedient that a road be opened, to contract therefor with the owners of the land.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762.

#### § 76.— Power to vacate.

##### Annotation.

Power of road commissioners to vacate highway.—26 L. R. A. 824, note.

#### § 77.— Proceedings.

##### Cross-Reference.

Mandamus to review, see "Mandamus," § 3.

(a) Under Code, art. 5, § 84, a taxpayer, owning land abutting on a highway sought to be vacated, was entitled to appeal from an order of the county commissioners closing the road.—*County Com'rs of Harford County v. Jay*, 122 Md. 324, 89 Atl. 715.

(b) Where an appeal from an order of county commissioners closing a highway was erroneously docketed as though the board, instead of the petitioners, was the appellee, in violation of Code, art. 5, § 84, but the board appeared generally, and no plea to the jurisdiction was filed, the error did not deprive the Circuit Court of jurisdiction.—*County Com'rs of Harford County v. Jay*, 122 Md. 324, 89 Atl. 715.

(c) Under Code, art. 25, § 12, expressly empowering the county commissioners to close roads, and art. 5, § 84, giving the right of appeal to the Circuit Court for the county, the jurisdiction of such court, when it has once properly attached, is exclusive.—*Jay v. Harford County Com'rs*, 120 Md. 49, 87 Atl. 521.

(d) Under Code 1888, art. 25, § 86, and the local laws of Baltimore county (act 1900, p. 1086, c. 685, § 208), providing that, whenever the county commissioners shall deem it expedient that examiners shall be appointed to view the grounds for the purpose of opening, altering, or closing a road, they shall appoint three persons as examiners, etc., the appointment of examiners to view the grounds on the closing of a road is within the discretion of the commissioners.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762. (See Code 1911, art. 25, § 91.)

#### § 78.— Operation and effect.

##### Cross-Reference.

Power of supervisors to grant franchise for toll road over vacated highway, see "Turnpikes and Toll Roads," § 1.

(a) Where the same person owned the land on both sides of a road closed by the county commissioners, such person was authorized to inclose the road, and appropriate the land over which it ran to his own use, after a conveyance of the bed of the road to him by the county commissioners, without any further action being taken.—*Jenkins v. Riggs*, 100 Md. 427, 59 Atl. 758.

(b) After an injunction prohibiting defendant from obstructing a public road, the commissioners of Baltimore county authorized the same road to be closed. *Held*, that such order placed the premises under the control of the defendant, who was the owner thereof, and gave him the same right of user of the land that he had in the rest of his estate.—*Williamson v. Carnan*, 1 G. & J. 184.

#### § 79. Abandonment.

##### Cross-References.

See "Adverse Possession," § 8.

Mandamus to review act of officer in certifying abandonment of highway, see "Mandamus," § 98.

##### Annotation.

Abandonment of a highway by non-user, or otherwise than by the act of the public authorities.—26 L. R. A. 449, note. Effect of nonuser of part of road, or of encroachments, obstructions, etc., upon highway.—26 L. R. A. 465, note.

(a) The public is estopped to claim any easement in a road in a city where, there being no further use for it, by reason of new streets, it has for years been aban-

doned, and closed to travel by permanent structures built across its entire width.—*Baldwin v. Trimble*, 85 Md. 396, 37 Atl. 176, 36 L. R. A. 489. [Cited and annotated in 46 L. R. A. (N. S.) 1216, on estoppel of municipality to open or use street.]

(b) Where a right of way was established by an adverse user for 20 years, it required the same length of time to lose it by abandonment.—*Cox v. Forrest*, 60 Md. 74. [Cited and annotated in 22 L. R. A. (N. S.) 881, 889, on abandonment or loss of private way by nonuser or improvements inconsistent with use; in 49 L. R. A. (N. S.) 90, on easement by prescription where original use was licensed; in 8 L. R. A. (N. S.) 151, on burden of showing permissiveness of use on which prescriptive easement is claimed.]

(c) If the right to a road be acquired by adverse user for 20 years, its nonuser for a like space of time, with the knowledge and acquiescence of the owner of the inheritance, will extinguish the right so acquired, because such ceasing to use the road affords legitimate presumption of a release of the right.—*Browne v. Trustees of M. E. Church*, 37 Md. 108. [Cited and annotated in 44 L. R. A. (N. S.) 90, on easement by prescription where original use was licensed; in 22 L. R. A. (N. S.) 882, 883, 888, 889, on abandonment or loss of private way by nonuser or improvements inconsistent with use.]

(D) TITLE TO FEE AND RIGHTS OF ABUTTING OWNERS.

#### Cross-References.

Liabilities of abutting owners for injuries from defects or obstructions in highway, see post, § 199.

Consent to construction of railroad, see "Railroads," § 75.

Easement by prescription in public way, see "Easements," § 10.

Effect of dedications, see "Dedication," §§ 53, 54, 65.

Effect of reservation in grant of public land, see "Public Lands," § 47.

Possession to support trespass, see "Landlord and Tenant," § 142.

Rights as against electric companies, see "Electricity," § 6.

Rights in respect to game, see "Game," § 3.

Title to support ejectment, see "Ejectment," § 9.

#### Annotation.

Duty of abutting owner to preserve lateral support to highway.—20 L. R. A. (N. S.) 287, note.

§§ 80-83. (See Analysis.)

#### § 84. Lateral support.

(a) The owner of a lot bounding on a street is entitled, as against third persons,

to the natural support afforded by the bed of the street.—*Baltimore & P. R. Co. v. Reaney*, 42 Md. 117. [Cited and annotated in 36 L. R. A. (N. S.) 689, on abutter's right to compensation for railroads in streets; in 21 L. R. A. (N. S.) 319, on liability for removal of lateral support in constructing railroad; in 6 L. R. A. (N. S.) 243, on liability for negligent removal of lateral support injuring buildings; in 1 L. R. A. (N. S.) 68, on effect of legislative authority on liability for private nuisance; in 68 L. R. A. 687, 690, 699, on liability for removal of lateral or subjacent support; in 52 L. R. A. 448, on liability of street-railway company for defect in track or street.]

§§ 85-86. (See Analysis.)

#### § 87. Rights and remedies as to obstructions and injuries to road.

#### Cross-References.

Removal of trees on improvement of highway, see post, § 115.

Rights and remedies as to injuries from drainage, see post, § 120.

#### Annotation.

Injunction as proper remedy to protect right of ingress and egress from street to abutting property.—35 L. R. A. (N. S.) 193, note.

(a) Where a bill sought to restrain the construction of a switch track along a county road in front of plaintiff's premises, charging that the construction, use, and operation of the siding would greatly depreciate the value of plaintiff's property as a residence by reason of the noise and danger incident to the operation of steam cars, and alleged that the smoke, noise, and dust arising from the use of locomotives would constitute a nuisance to plaintiff individually, as well as to the public, and would inflict irreparable injury on plaintiff, but failed to allege the proximity of the railroad to plaintiff's dwelling house, or in what way the value of the latter could or would be affected by the construction of the switch, or how the comfort and enjoyment thereof would be interfered with, or any facts showing how the use of the railroad, the smoke, and noise would operate injuriously thereon, the bill was insufficient to justify an injunction.—*Davis v. Baltimore & O. R. Co.*, 102 Md. 371, 62 Atl. 572.

(b) Where, in a suit by an adjoining property owner to restrain the construction of a railroad switch along a county road near her property as a nuisance, there was no

evidence showing any diminution in value of plaintiff's property because of the switch, nor to show how noise and smoke from locomotives using the switch could affect the enjoyment of plaintiff's property, nor the probable quantity of such noise and smoke, or what inconvenience would be occasioned thereby, the evidence was insufficient to justify an injunction.—*Davis v. Baltimore & O. R. Co.*, 102 Md. 371, 62 Atl. 572.

(c) An owner of property on a highway which county commissioners allow to become totally impassable, by failure to maintain it, so that it is a public nuisance, having no other way of getting to and from his property, has a special damage, authorizing action against the commissioners.—*Bembe v. Commissioners of Anne Arundel County*, 94 Md. 321, 51 Atl. 179, 57 L. R. A. 279. [Cited and annotated in 8 L. R. A. (N. S.) 229, on right of action for highway obstructions, hindering access to property.]

§ 88. Use of highway for other public purposes.

§ 89. Use of highway for other purposes by abutting owner.

#### Annotation.

Encroachment on public street or alley by occupier of abutting property for storage or similar purposes as basis of adverse possession or estoppel.—36 L. R. A. (N. S.) 1056, note.

Right to use highway for ditch.—34 L. R. A. (N. S.) 506, note.

Power of municipality to permit abutting owners to extend structures into street.—28 L. R. A. (N. S.) 375, note.

Right to join land to street by driveway or walk.—30 L. R. A. (N. S.) 1074, note.

Right to continue enjoyment of passway across highway.—12 L. R. A. (N. S.) 918, note.

Right to lay pipe or make other underground use of highway.—13 L. R. A. (N. S.) 905, note.

## II. HIGHWAY DISTRICTS AND OFFICERS.

#### Cross-References.

Assignment of claim for contract work to road overseer, see post, § 113.

Notice to officers of defects in highway as notice to town, see post, § 193.

Determination of boundaries, see "Boundaries," § 51.

Election of officers, see "Elections."

Injunctions against highway officers, see "Injunction," § 79.

Mandamus as affected by existence of other remedy against highway officers, see "Mandamus," § 3.

Prohibiting acts of highway commissioners, see "Prohibition," § 6.

Relation of master and servant between road commissioner and men employed by him, see "Master and Servant," § 88.

Resisting or obstructing, see "Officers," § 113.

§ 90. Creation and existence of districts.

#### Cross-References.

Authority of county court to lay off districts within city limits, see post, § 130.

Municipalities as road districts, see post, § 130.

Special tax districts, see post, § 121.

§ 91. Creation and organization of road boards.

§ 92. Creation and abolition of offices.

§ 93. Appointment, qualification, and tenure of officers.

(a) Code Pub. Local Laws, art. 20, § 227, applicable to Somerset county, and act 1890, c. 113, fix the term of office of road supervisor at two years, and until his successor is duly appointed and qualifies, and provide for his removal by the county commissioners "for incompetency, willful neglect of duty, or misdemeanor in office." *Held*, that the removal of a supervisor by the commissioners "for cause," without specifying the cause, and without any formal accusation against or notice to such supervisor, is illegal and void.—*Miles v. Stevenson*, 80 Md. 358, 30 Atl. 646. (See act 1916, c. 260, p. 531.) [Cited and annotated in 19 L. R. A. 53, 56, 65, 69, 70, 71, 77, on mandamus to restore to office one illegally removed.]

(b) Act 1868, c. 411, provides that "the county commissioners of Baltimore county, within twenty days after the passage of this act, shall order an election in each of said primary road districts, having first given two weeks' notice," etc., "for five supervisors of roads and bridges," etc. *Held*, that the failure to order the election within the time prescribed by the act did not render the act inoperative and void.—*State v. Baltimore County Com'rs*, 29 Md. 516. [Cited and annotated in 47 L. R. A. 519, on unconstitutionality of statute as defense against mandamus to compel enforcement.]

**§ 94. Compensation and expenses.***Cross-Reference.*

To county commissioners acting as road officers, see "Counties," § 46.

**§ 95. Authority, powers, and proceedings.***Cross-References.*

Construction, improvement and repair of highways, see post, §§ 98-120.

Power to alter highway, see ante, § 71.

Power to vacate highway, see ante, § 76.

Removal of obstruction on highway, see post, § 157.

Restraining obstruction of highway, see post, § 155.

Taxes and assessments, see post, §§ 121-151.

*Annotation.*

Power of road commissioners to vacate highway.—26 L. R. A. 824, note.

Nature of office of highway officer.—22 L. R. A. 824, note.

**§ 96. Duties and liabilities.***Cross-References.*

Liabilities for injuries from defects or obstructions in highway, see post, § 198.

Liability for damages caused by drainage, see post, § 120.

Liability of county or of road overseer for damages for wrongful construction of causeway, see post, § 118.

Liability of township for neglect or wrongful acts of officers, see post, § 118.

Assault in removing obstructions, see "Assault and Battery," § 10.

Exercise of authority as defense in action for trespass, see "Trespass," § 24.

Grounds for double or treble damages for trespass, see "Trespass," § 60.

Persons liable for trespass, see "Trespass," § 30.

Power of town to raise money to indemnify highway surveyor for liability incurred in discharge of duty, see "Towns," § 55.

Right of township to sue road overseer for breach of duty, see "Towns," § 66.

*Annotation.*

Duties required of highway officers.—22 L. R. A. 824, note.

(a) Act 1847, c. 201, § 6, was an infringement of the compact between the United States and the state of Maryland contained in act 1831, c. 85, and did not render the superintendent of that part of the United States road within the state of Maryland personally liable on claims against the road.—*Edwards v. Gramlic*, 2 Md. 62.

**§ 97. Liabilities on official bonds.****III. CONSTRUCTION, IMPROVEMENT, AND REPAIR.***Cross-References.*

As establishing highway by prescription or user, see ante, § 7.

Issue of bonds for construction and maintenance of highways, see "Counties," § 174; "Towns," § 52.

Laws relating to improvement as class legislation, see "Constitutional Law," § 208.

Mandamus to compel repair, see "Mandamus," § 3.

Of bridges, see "Bridges," §§ 20-22.

Of private roads, see "Private Roads," § 5.

Of turnpikes and toll roads, see "Turnpikes and Toll Roads," §§ 17, 19-22.

Power of county to incur indebtedness, see "Counties," §§ 149-196.

Restraining illegal acts by county officers, see "Counties," § 196.

Review of justice's judgment for repairs, see "Justices of the Peace," § 183.

Submission of question of expenditure to popular vote, see "Counties," § 151.

Submission of question of improvement to popular vote, conduct of election, see "Elections," § 30.

Working convicts on highways, see "Convicts," § 7.

**§ 98. Necessity for opening and constructing.****§ 99. Authority and duty to construct.***Cross-References.*

See post, § 99½.

Failure to construct as ground for restraining enforcement of assessment, see post, § 148.

(a) Code 1904, art. 91, § 33, provides for a notification to the state geological and economic commission of the intent of the county commissioners to cause a particular road to be built, and for a request for plans, specifications, and an estimate of the cost. Section 34 provides for the owners of two-thirds of the lands binding on any public road not less than one mile long, calling on the county commissioners to make the request as set forth in § 33, on payment by the petitioners of 10 per cent. of the cost, etc. Section 35 requires the commission, on concluding that the proposed construction is proper, to make necessary surveys and plans, and to furnish an estimate of the cost, provided the amount appropriated by the state and apportioned to the county is sufficient for the necessary outlay. Section 38 provides that after the receipt of plans, estimate, etc., the county commissioners, if

they elect to proceed, or if 10 per cent. of the estimated cost has been paid or secured, shall advertise for bids, provided that they shall not be required to advertise for work to an amount exceeding 25 per cent. of the county road levy. *Held*, that the proviso of § 38 refers to the whole estimated cost of the road, and not to the county's part only.—*Frederick County Com'rs v. Fout*, 110 Md. 165, 72 Atl. 765. (See Code 1911, art. 91, §§ 33, et seq.; *Id.* [vol. 3], §§ 33A, et seq.)

(b) Code 1904, art. 91, § 38, also provides that under no condition shall the amount to be paid by the state exceed one-half of the detailed estimate furnished. Section 42 provides for the payment by the state to the county commissioners of one-half of the said total amount of costs so certified, not to exceed one-half of the estimate. *Held*, that, if the estimate exceeds 25 per cent. of the road levy, the county commissioners are not required to advertise for bids.—*Frederick County Com'rs v. Fout*, 110 Md. 165, 72 Atl. 765. (See Code 1911, art. 91, §§ 33, et seq.; *Id.* [vol. 3], art. 91, §§ 33A, et seq.)

#### § 99¼. Highway funds.

(a) The road commission can use part of the funds allotted to Baltimore county by act 1912, c. 370, providing for the completion of the highway system, as commenced under act 1908, c. 141, in order to equalize the distribution among the various counties of the fund provided by the act of 1908; it appearing that Baltimore county had received more than its share under the earlier act.—*Weller v. Mueller*, 120 Md. 633, 87 Atl. 1045.

(b) That the allotment to Baltimore county was a specific sum instead of a specified portion is not sufficient to require a construction of act 1912, c. 370, which would prevent the eventual fair distribution of the road funds, as provided by act 1908, c. 141.—*Weller v. Mueller*, 120 Md. 633, 87 Atl. 1045.

(c) That Baltimore county pays a larger road tax than other counties is not a reason for presuming the Legislature intended to discriminate in favor of it by act 1912, c. 370, providing an additional road fund.—*Weller v. Mueller*, 120 Md. 633, 87 Atl. 1045.

(d) That the Legislature which adopted act 1912, c. 370, providing further funds for

the completion of a highway started under act 1908, c. 141, had knowledge that Baltimore county had received more than its share under the earlier act does not indicate an intention of the Legislature that the later fund should not be so expended as to equalize the distribution of the entire road fund.—*Weller v. Mueller*, 120 Md. 633, 87 Atl. 1045.

#### § 99½. Existence and character of road.

(a) In an action for the death of one drowned while attempting to cross a mill pond by walking on the dam, it appeared that the dam crossed the pond in such a way as to approach at each end a public highway extending partially around the pond, that for 50 years the public had been accustomed to use the dam as a footway, that the dam was private property, and that the accident occurred at a sluiceway, over which loose planks had been placed for the convenience of employees. *Held*, that the dam was not a highway by prescription, so as to render the county liable.—*State v. Kent County Com'rs*, 83 Md. 377, 35 Atl. 62.

#### §§ 100-102. (See Analysis.)

#### § 103. Mode and plan of construction or improvement in general.

(a) Under act 1900, c. 346, creating a board of county road commissioners for Prince George's county, and empowering it to use certain funds "in the construction of permanent highways, beginning at the line of the District of Columbia, at the end of some highway therein, and building out into the county upon existing public roads," the board is authorized to select some particular roads for improvement, and is not required to apply the funds proportionately to the improvement of all the roads beginning at the line and extending into Prince George's county.—*Blundon v. Crosier*, 93 Md. 355, 49 Atl. 1.

(b) The levy court is the only tribunal that can adjudicate on the question whether the public convenience requires an alteration in a public road.—*Williamson v. Carnan*, 1 G. & J. 184.

#### § 104. Mode of making alterations.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 105. Authority and duty to maintain and repair.

#### Cross-References.

See ante, § 99½; "Bridges," §§ 21, 22.  
Duty and ability to repair as affecting liability for injuries from defects, see post, § 190.  
Necessity of acceptance of dedication, see "Dedication," § 31.  
Number of votes required to pass town ordinance authorizing removal of trees from highway, see "Towns," § 26.

### § 106. Compelling improvement or repair.

#### Cross-Reference.

Mandamus to compel, see "Mandamus," § 94.

#### Annotation.

Power of municipal corporation to require railroad company to keep highway in repair at overhead or underground crossing.—18 L. R. A. (N. S.) 915, note.

### § 107. Proceedings for improvement of highways and for construction of free gravel roads or turnpikes.

#### Cross-References.

Acquisition of gravel roads or turnpikes from individual or corporate proprietors, see "Turnpikes and Toll Roads," § 25.

Effect of determination by county board as to its jurisdiction, see "Counties," § 57.

Establishment of toll roads by public authorities, see "Turnpikes and Toll Roads," § 4.

(a) Where the question whether it appeared from the petition of citizens and taxpayers that there was a general public demand for the "procurement and improvement" of a road as required by act 1912, c. 790, § 452, was left to the judgment of the county commissioners, their action thereon is not reviewable by the Court of Appeals.—*Montgomery County Com'rs v. Henderson*, 122 Md. 533, 89 Atl. 858.

(b) The requirements of act 1904, p. 388, c. 225, authorizing county commissioners to construct and repair public roads at the joint expense of the state and county, and regulating the exercise of that power by §§ 1, 2, 6, and 7, prescribing the proceedings and the manner of awarding contracts, are intended to safeguard the interests of taxpayers, as well as of the state, and must be complied with to give validity to the pro-

ceedings, and the provisions of § 15 that the act shall not abridge the general powers of the county commissioners in reference to the construction and repair of public roads do not affect these requirements; the two systems of road improvement created by said act and the general laws being distinct.—*Anne Arundel County Com'rs v. United Rys. & Electric Co.*, 109 Md. 377, 72 Atl. 542. (See Code, art. 91, §§ 33, et seq.; *Id.* [vol. 3], art. 91, §§ 33A, et seq.)

### § 108. Criminal responsibility for failure to maintain or repair.

#### Cross-Reference.

See "Bridges," § 28.

### § 109. Materials for construction or repair.

(a) Vitrified brick is "other good material," within act 1904, p. 225, c. 225, § 4, providing that the specifications of material to be used in the construction of public roads shall require the construction "of a macadamized or of a telford or of other stone, or of a road constructed of gravel or of other good material."—*Anne Arundel County Com'rs v. United Rys. & Electric Co.*, 109 Md. 377, 72 Atl. 542. (See Code, art. 91, §§ 33, et seq.; *Id.* [vol. 3], art. 91, §§ 33A, et seq.)

### § 110. Appliances and machinery for construction and repair.

#### Cross-References.

Payment for road machinery out of general fund of town, see "Towns," § 49.

Power of town to borrow money to pay for machinery, see "Towns," § 46.

### §§ 111-113. Work of construction or repair.

#### Cross-References.

See "Bridges," §§ 20, 21.

Collateral attack on orders of county board, see "Counties," § 57.

Individual interest of officers in contract, see "Counties," § 122.

Minutes of county board, see "Counties," § 53.

### § 114. Damages from construction or repair.

#### Cross-References.

Collection of revenue for payment of damages, see "Counties," § 155.

Compensation or damages to abutting owners on alteration of highway, see "Eminent Domain," § 101.

Compensation or damages to abutting owners on opening or vacating highway, see "Eminent Domain," § 100.

Necessity of payment before taking land for highway, see "Eminent Domain."

Proceedings to assess damages caused by opening, alteration or vacation of highways, see "Eminent Domain," § 114.

Remedies of owners of property taken or injured by opening or altering highway, see "Eminent Domain," § 296.

Review of decision in proceedings for assessment as dependent on finality, see "Appeal and Error," § 77.

Rights of person acquiring title by adverse possession, see "Adverse Possession," § 105.

### § 115.—In general.

#### Annotation.

Liability of a municipal corporation for injury to abutting property from changing the grade of a street under a constitutional provision against "damaging" private property for public use without compensation.—36 L. R. A. (N. S.) 1194; L. R. A. 1915A, 382, notes.

Municipal liability for injury to abutting property from bringing street to grade first established, under constitutional provision against "damaging" private property for public use without compensation.—7 L. R. A. (N. S.) 108, note.

Municipal liability for injury to property rights through defective plan of street's construction.—67 L. R. A. 257, note.

Damage to abutting owner by first grading and improvement of street.—23 L. R. A. 658, note.

(a) The building of abutments to be used as the approach for elevated railway tracks, in the center of the street, is not a taking of the property of abutting landowners, within the meaning of Const. art. 3, § 40, which prohibits the "taking" of private property for a public use without compensation being "first" paid or tendered, so as to entitle the landowners to enjoin the erection of the same until compensation is paid for the injury.—*Garrett v. Lake Roland El. Ry. Co.*, 79 Md. 277, 29 Atl. 830, 24 L. R. A. 396. (See Const. art. 3, § 40A.) [Cited and annotated in 1 L. R. A. (N. S.) 132, on effect of legislative authority on liability for private nuisance; in 15 L. R. A. (N. S.) 58, on cutting off access to highway as taking; in 36 L. R. A. (N. S.) 696, 757, on abutter's right to compensation for railroads in streets.]

(b) Code 1888, art. 23, §§ 222-226, relating to telegraph companies in so far as they contain any provisions authorizing the construction of telegraph lines over private

property, and requiring the property owners to seek compensation therefor afterwards by an action at law for damages, are unconstitutional, being in conflict with Const. art. 3, § 40, requiring compensation to be first paid or tendered before private property is taken for public use.—*American Telephone & Telegraph Co. v. Pearce*, 71 Md. 535, 18 Atl. 910, 7 L. R. A. 200. (See Code 1911, art. 23, §§ 357-361.) [Cited and annotated in 17 L. R. A. 480, on what use of street or highway is additional burden; in 36 L. R. A. (N. S.) 518, on uses to which railroad right of way may be devoted.]

(c) Act 1865, c. 265, incorporating the Consolidation Coal Company, and investing it with all the rights of eminent domain in the survey, location, and construction of certain railroads, must be interpreted in subordination to the constitutional inhibition of any law authorizing private property to be taken for public use without just compensation first paid or tendered.—*State v. Consolidation Coal Co.*, 46 Md. 1. (See Const. art. 3, §§ 40, 40A.)

(d) In an action against county highway commissioners for having wrongfully placed obstructions in a stream on a highway below plaintiff's milldam, defendants having pleaded that the erections complained of were reasonable and necessary improvements of the highway, and were constructed with ordinary care and skill, and maintained with care and without malice, in such manner only as was necessary to keep the highway in good order, such plea was a good defense, as it was the duty of the commissioners to make proper repairs; and, the plaintiff having demurred to it, thereby admitting the truthfulness of the allegations, the demurrer was properly overruled.—*Walter v. Wicomico County Com'rs*, 35 Md. 385. [Cited and annotated in 39 L. R. A. 64, on liability of counties for torts and negligence; in 59 L. R. A. 854, on liability for damming back stream.]

(e) The law casts upon the county commissioners, not only the right, but the duty, to protect the public roads from injury and keep them in repair, and individual rights must be held in subordination to those of the public; and therefore if, by reasonable or necessary improvements to a highway, a party suffers consequential damages, no



right of action accrues therefor.—*Tyson v. Baltimore County Com'rs*, 28 Md. 510.

(f) All modes of opening, widening, and closing streets by right of eminent domain are subject to the constitutional inhibition that the Legislature shall enact no law authorizing private property to be taken for public use without just compensation, as agreed on by the parties or awarded by a jury, being first paid or tendered to the party entitled to such compensation.—*State v. Graves*, 19 Md. 351. [Cited and annotated in 9 L. R. A. (N. S.) 1045, on municipality's power to limit control over street or other public ground as incident of acquisition; in 16 L. R. A. (N. S.) 538, on time title passes in condemnation proceedings.]

(g) The assessment by commissioners, with the right of appeal to the Criminal Court of Baltimore, and the assessment of benefit dues on the proprietors benefited, are both constitutional modes of providing compensation to owners of land taken for public use.—*State v. Graves*, 19 Md. 351. [Cited and annotated, see *supra*.]

(h) A railroad company authorized to acquire lands must make compensation to the owners of the land before constructing a railroad over such land.—*Western Maryland R. Co. v. Owings*, 15 Md. 199, 74 Am. Dec. 563.

(i) The constitutional prohibition against the taking of private property for public use before compensation has been made or tendered will prevent the entry on land to grade or prepare it for street purposes before damages are constitutionally ascertained and paid or tendered.—*Steuart v. City of Baltimore*, 7 Md. 500. [Cited and annotated in 36 L. R. A. (N. S.) 278, on allowance for improvements made with knowledge that property required for public use.]

(j) Under the acts of the Legislature incorporating railroad and canal companies, it is not necessary that a valuation of the property taken under authority of the acts should be made, and the amount paid, before the corporations proceed to construct their works, provided such construction will not obscure the property taken, so that its value cannot be judged of; but there should be no unreasonable delay in having the valuation made.—*Compton v. Susquehanna R. R. Co.*, 3 Bland 386.

(k) Commissioners appointed by county commissioners to assess damages for a new road over the land of a certain owner verbally agreed to surrender an old road over his land to him in consideration of a release of damages for the new road; and, he having executed the release, they reported no damages to his land, and this report was adopted by the county commissioners, authorized to vacate a road only on petition. Held, that, the county commissioners subsequently re-viving the old road, the owner of the land could not require the commissioners to pay damages.—*Barrickman v. Harford County Com'rs*, 11 G. & J. 50. [Cited and annotated in 26 L. R. A. 758, on mitigation of damages in eminent domain by preserving estate, rights, or easements to owner.]

(l) Where the owner of land taken for a new road agreed that the commissioners appointed to assess the damages might report no damage if the county commissioners would surrender to him the old road, to which the county commissioners assented, and the report and surrender were made accordingly, it was held that the formal report of no damage could not be controlled by evidence of the verbal arrangement in pursuance of which the report was made, and that such arrangement was void; the county commissioners having no authority to close and surrender the old road, there being no petition of citizens therefor.—*Barrickman v. Harford County Com'rs*, 11 G. & J. 50. [Cited and annotated, see *supra*.]

#### § 116.— Deduction or set-off of benefits.

(a) In estimating the value of a lot to be condemned in proceedings for the opening of a street, the circumstances of the opening of the street should not be considered, but the owner of a lot lying on the bed of the street which is taken for public use should be awarded compensation for it, precisely as if no such street was opened over it.—*Moale v. City of Baltimore*, 5 Md. 314, 61 Am. Dec. 276. [Cited and annotated in 26 L. R. A. 664, on effect of abandonment of highway; in 14 L. R. A. (N. S.) 878, 881, on effect of grantee's rights of call in deed for street or alley owned by grantor in fee; in 22 L. R. A. (N. S.) 9, on judicial power over eminent domain; in 36 L. R. A. (N. S.) 278, on allowance for improvements made with knowledge that property required for public use.]

### § 117. Liabilities for expenses or damages.

#### Cross-References.

Compensation and expenses of officers, see ante, § 94.

Liabilities of highway officers for damages, see ante, § 96.

Power of county to issue bonds for construction or improvement of highways, see "Counties," § 174.

Power of town to issue bonds for construction or improvement of highways, see "Towns," § 52.

### § 118.—In general.

(a) County commissioners are not liable in damages for an injury sustained by a person traveling on a county road by reason of the negligence of a laborer employed by a road supervisor to assist him in repairing the road, such supervisor being an independent officer appointed in pursuance of law.—*Anne Arundel County Com'rs v. Duvall*, 54 Md. 350, 39 Am. Rep. 393. [Cited and annotated in 22 L. R. A. 824, 832, 833, on personal liability of highway officers for negligence; in 39 L. R. A. 59, on liability of counties for torts and negligence; in 66 L. R. A. 128, on liability for acts of independent contractor where injuries result from employer's nonperformance of absolute duties.]

### § 119.—Apportionment.

(a) Where a street is improved at the joint expense of the state and county, as provided by act 1904, p. 388, c. 225, the state must pay one-half the cost of paving with vitrified brick, when that material is selected, instead of one-half of what a macadam road would cost.—*Anne Arundel County Com'rs v. United Rys. & Electric Co.*, 109 Md. 377, 72 Atl. 542. (See Code, art. 91, §§ 33, et seq.; Id. [vol. 3], art. 91, §§ 33A, et seq.)

### § 120. Drainage.

#### Cross-References.

Benefit to highway from construction of reclamation drain, see "Drains," § 70.

Mode of constructing drains over highway, see "Drains," § 43.

(a) In an action for injuries to plaintiff's land by the alleged negligent construction of a drain across a highway by county authorities, which caused surface water to flow over the land, an instruction that if the county obstructed the natural flow of the surface water from plaintiff's land across

the highway, and, in working and repairing the road, so raised the roadbed as to obstruct the water flow, and if ditches provided for the passage of the water were so constructed as to back up the water on plaintiff's land, he was entitled to recover, was erroneous, for failure to require that such obstruction must have been the result of defendant's negligence.—*Kent County Com'rs v. Godwin*, 98 Md. 84, 56 Atl. 478.

(b) Where, in an action for injuries to plaintiff's land by the construction of a drain across a highway by county authorities, the only evidence that plaintiff assisted in constructing the drain was that he worked as a laborer for hire with others in the employment and under the direction of the road supervisor in repairing the road, the court properly refused to charge that he could not recover if he assisted in making the repairs, and knew or ought to have known that injuries would result therefrom.—*Kent County Com'rs v. Godwin*, 98 Md. 84, 56 Atl. 478.

(c) In an action against a county for injuries to plaintiff's land, a declaration alleging that defendant, in attempting to divert the natural flow of surface water over and from plaintiff's land, negligently constructed a drain described across a public road near plaintiff's gate, which failed to drain the land, and caused water to back and accumulate thereon, which injured plaintiff and caused him great damage, stated a cause of action.—*Kent County Com'rs v. Godwin*, 98 Md. 84, 56 Atl. 478.

(d) In an action for injuries to land by the negligent construction of a drain across a highway by county authorities, the fact that plaintiff negligently contributed to and increased the injury was no defense.—*Kent County Com'rs v. Godwin*, 98 Md. 84, 56 Atl. 478.

## IV. TAXES, ASSESSMENTS, AND WORK ON HIGHWAYS.

#### Cross-References.

Appellate jurisdiction of suit to recover assessment dependent on whether case involves freehold, see "Courts," § 219.

Delegation of power of state, see "Taxation," §§ 28, 29.

Legislative control of county taxation, see "Counties," § 24.

Limitations against action to recover road tax refunded to taxpayer, see "Limitation of Actions," § 100.

Power to tax for benefit of special road districts, see "Taxation," § 38.

Private roads, see "Private Roads."

Proceeds of license taxes as part of road fund, see "Licenses," § 33.

### § 121. Power of taxation and assessment in general.

#### Cross-Reference.

See post, § 122.

(a) Act 1898, c. 531, requires the district road commissioners to report needed repairs and improvements to the county road commissioners, and such work as is recommended by the county road commissioners is submitted to the county commissioners, and, if approved by them, the work is required to be given out by the county road commissioners by contract to the lowest bidder. Section 203g provides that if the county road commissioners fail to make a contract for any district it shall be their duty to employ suitable persons to perform such work, and on such terms as they think best. Section 201 requires the county commissioners to keep a separate account of all road expenses, and to provide for the same by levying a tax in each election district. *Held*, that where work was not done under contract, but by the day, by persons employed by the county road commissioners under § 203g, the county commissioners could issue certificates of indebtedness, and provide for a levy to meet the expense of such work.—*Hall v. Commissioners of Anne Arundel County*, 94 Md. 282, 51 Atl. 86.

### § 122. Constitutional and statutory provisions.

#### Cross-References.

Constitutional limitation of rate of taxation in general, see "Counties," § 190.

Double taxation, see "Taxation," § 47.

Impairment of vested rights, see "Constitutional Law," § 100.

Retrospective laws, see "Constitutional Law," § 188.

Self-executing provisions of constitution, see "Constitutional Law," § 31.

Taxation according to value, see "Taxation," §§ 49, 55.

Uniformity, see "Taxation," § 44.

Uniformity of operation of general laws, see "Statutes," § 72.

(a) Act 1898, c. 531, does not repeal Code 1888, art. 25, §§ 1, 7, giving the county com-

missioners in each county control over the public roads, and requiring them to levy all needful taxes, on the assessable property within the county; and therefore such levy and service were within the authority of the board, independent of § 203g of that act.—*Hall v. Commissioners of Anne Arundel County*, 94 Md. 282, 51 Atl. 86. (See Code 1911, art. 25, §§ 1, 7.)

### §§ 123-130. Highway taxes.

#### Cross-Reference.

Jurisdiction of justice of the peace, see "Justices of the Peace," § 35.

### §§ 131-149. Local assessments and special taxes.

#### Cross-References.

For benefit of turnpike and gravel road companies, see "Turnpikes and Toll Roads," § 10.

Reception of evidence on trial by court, see "Trial," § 377.

### § 150. Poll taxes.

#### Cross-References.

Application of constitutional restrictions relating to general taxation, see "Taxation," § 55.

Pleading in action before justice of the peace to enforce collection, see "Justices of the Peace," § 91.

### § 151. Work on road by taxpayers.

#### Cross-References.

Repeal of statutes, see ante, § 122.

Application of constitutional restrictions relating to taxation in general, see "Taxation," §§ 47, 55.

Relation between person working out highway tax and highway officer, see "Master and Servant," § 1.

§ 152. (Omitted from the classification used herein.)

## V. REGULATION AND USE FOR TRAVEL.

#### Cross-References.

Restraining use, see "Injunction," § 93.

Turnpikes and toll roads, see "Turnpikes and Toll Roads," §§ 33-51.

### (A) OBSTRUCTIONS AND ENCROACHMENTS.

#### Cross-References.

Erection of gates, bars or other structures as destroying public easement, see ante, § 79.

Injuries from obstructions, see post, §§ 187-216.

By trains, see "Railroads," § 246.

Ejectment as appropriate remedy for encroachment on highway, see "Ejectment," § 9.

In construction and maintenance of railroads, see "Railroads," § 113.

Injury to highway from construction of railroad, see "Railroads," § 114.

Jurisdiction of justices of the peace, see "Justices of the Peace," § 32.

Mandamus to compel removal of obstructions, see "Mandamus," § 98.

On private roads, see "Private Roads," §§ 8-10.

On streets, see "Municipal Corporations," §§ 691-700.

Operation of railroads, see "Railroads," § 222.

Turnpike road as highway, the obstruction of which is a public nuisance, see "Turnpikes and Toll Roads," § 2.

### § 153. Obstruction of use of highway in general.

#### Annotation.

Obstruction of street or sidewalk for business or building purposes.—14 L. R. A. 556, note.

### § 154. Buildings or other structures encroaching on highway.

#### Annotation.

Right of abutting property owner to extend steps into street.—24 L. R. A. (N. S.) 193, note.

### § 155. Persons entitled to remedies.

#### Cross-References.

Rights and remedies of abutting owner, see ante, §§ 86, 87.

Injury to bridge, see "Bridges," § 27.

Obstruction of highway in construction of railroad, see "Railroads," § 113.

Obstruction of highway in construction of street railroad, see "Street Railroads," § 57.

Obstruction of highway in operating railroad, see "Railroads," § 222.

#### Annotation.

Does the fact that one is prevented by an unlawful obstruction from using a highway cause him a special damage which will sustain an action by him against the wrongdoer.—28 L. R. A. (N. S.) 1053, note.

Obstruction in highway preventing access to property except by circuitous route as a special injury entitling owner to maintain action for damages or abate the nuisance.—8 L. R. A. (N. S.) 227; 21 L. R. A. (N. S.) 75, notes.

(a) Where complainant sought to enjoin the construction of a railroad switch along a county road, alleging that the maintenance of the switch would interfere with and endanger the use of the road, which was her only exit from her premises, but it was not contended that there was any actual obstruction of the road by the switch, complainant's

safety and comfort in using the road only being impaired, her injury, if any, was not different in kind from that suffered by the general public having occasion to use the road, and hence she was not entitled to sue to enjoin the maintenance of the switch.—*Davis v. Baltimore & O. R. Co.*, 102 Md. 371, 62 Atl. 572.

(b) To entitle a party to damages for obstructing a highway, he must show that he has suffered special damage, different, not merely in degree, but in kind, from that suffered by the community at large.—*Houck v. Wachter*, 34 Md. 265, 6 Am. Rep. 332. [Cited and annotated in 8 L. R. A. (N. S.) 227, on right of action for highway obstructions, hindering access to property.] *Crook v. Pitcher*, 61 Md. 510. [Cited and annotated in 28 L. R. A. (N. S.) 1054, on right of one prevented by unlawful obstruction from using highway to maintain action.]

(c) One cannot maintain an action for the unlawful obstruction of a public highway unless he shows that he has sustained a special injury.—*Schall v. Nusbaum*, 56 Md. 512. [Cited and annotated in 28 L. R. A. (N. S.) 1053, on right of one prevented by unlawful obstruction from using highway to maintain action.]

(d) If, by reason of obstructions erected on a strip of ground alleged to be a public way, the applicant for an injunction, claiming the use of the strip as one of the public, was obstructed or deprived of reasonable access to his lot, and thereby subjected to loss and inconvenience, that would be such special and particular injury as would entitle him to relief in equity; but, the applicant for such an injunction and the purchaser of such strip having contracted with each other in respect to its use, on failure of compliance the remedy would be on the agreement.—*Gore v. Brubaker*, 55 Md. 87.

(e) If the right of way over a street of the owner of a lot fronting thereon is so unlawfully obstructed as to subject him to a special injury, not common to, but distinct and different from that suffered by, the public, and for which he cannot obtain adequate compensation at law, he is entitled to the summary interference of a court of equity by injunction.—*Baltimore & O. R. Co. v. Strauss*, 37 Md. 237. [Cited and annotated in 7 L. R. A. (N. S.) 996, on effect of abutter's consent to track in street or high-

way; in 36 L. R. A. (N. S.) 776, 834, on abutter's right to compensation for railroads in streets.]

(f) On a bill for an injunction to compel the removal of certain obstructions from a public street which amount to a public nuisance, to entitle the complainant to relief he must show that the obstructions would inflict upon his rights an important and irreparable injury, or such an injury as could not be fully compensated by an action at law, and that the case is of such a nature as requires the interposition of a court of equity to give full and adequate relief.—*Fort v. Groves*, 29 Md. 188. [Cited and annotated in 7 L. R. A. (N. S.) 77, on injunctive relief as to fences or gates.]

#### § 156. Persons liable for obstruction or encroachment.

#### § 157. Removal.

##### Cross-References.

See ante, § 155.

By abutting owners, see ante, § 87.

Liabilities of highway officers for trespass in removal, see ante, § 96.

On construction of highway, see ante, § 102.

Of railroad tracks, see "Railroads," § 79.

Right to jury trial, see "Jury," § 14.

##### Annotation.

Mandatory injunction for removal of obstructions to highway.—20 L. R. A. 162, note.

#### § 158. Abatement.

##### Cross-References.

See post, § 159.

Misjoinder of causes of action, see "Action," § 38.

#### § 159. Injunction.

##### Cross-References.

See ante, § 155

By abutting owners, see ante, § 87.

Jurisdiction of courts of limited or inferior jurisdiction, see "Courts," § 183.

##### Annotation.

Injunction against maintenance of fence in highway.—7 L. R. A. (N. S.) 72, note.

(a) A bill by the commissioners of a county against a gas company alleged that defendant was excavating a public road for the purpose of laying gas pipes, the excavation being such as to greatly interfere with public use of the road, and the prayer was for an injunction restraining such conduct on the part of defendant until it should have obtained a permit from the board of county

commissioners. *Held*, that, it appearing that defendant was not required to secure a permit before making such excavations, the injunction would not be granted under such a prayer on the ground that the facts justified the interposition of a court of equity.—*Consolidated Gas Co. v. Baltimore County Com'rs*, 98 Md. 689, 57 Atl. 29.

(b) Plaintiff and defendant owned adjoining farms lying between public roads, and defendant fenced up a road which passed across the farms from one public road to the other. Plaintiff could reach the market, by going further, by the public road along his own land; and, on account of the bad condition of the road in controversy, it was seldom used by plaintiff. *Held*, that plaintiff was not entitled to an injunction to restrain defendant from fencing up the road on the ground that it would result in irreparable injury.—*Gulick v. Fisher*, 92 Md. 353, 48 Atl. 375. [Cited and annotated in 7 L. R. A. (N. S.) 81, on injunctive relief as to fences or gates.]

(c) Where plaintiff's bill in equity against a turnpike company alleged in substance only a case of a public nuisance caused by the erection of a tollgate, the remedy was by indictment, and not in equity.—*Schall v. Nusbaum*, 56 Md. 512. [Cited and annotated in 28 L. R. A. (N. S.) 1053, on right of one prevented by unlawful obstruction from using highway to maintain action.]

(d) If, by reason of obstructions erected on a strip of ground alleged to be a public way, the applicant for an injunction, claiming the use of the strip as one of the public, was obstructed or deprived of reasonable access to his lot, and thereby subjected to loss and inconvenience, that would be such special and particular injury as would entitle him to relief in equity; but, the applicant for such an injunction and the purchaser of such strip having contracted with each other in respect to its use, on failure of compliance the remedy would be on the agreement.—*Gore v. Brubaker*, 55 Md. 87.

(e) If the right of way over a street of the owner of a lot fronting thereon is so unlawfully obstructed as to subject him to a special injury, not common to, but distinct and different from that suffered by the public, and for which he cannot obtain adequate

compensation at law, he is entitled to the summary interference of a court of equity by injunction.—*Baltimore & O. R. Co. v. Strauss*, 37 Md. 237. [Cited and annotated in 7 L. R. A. (N. S.) 996, on effect of abutter's consent to track in street or highway; in 36 L. R. A. (N. S.) 776, 834, on abutter's right to compensation for railroads in streets.]

### § 160. Actions for damages.

#### Cross-References.

See ante, § 155.

By abutting owners, see ante, § 87.

Application of general statute of limitations to actions for obstructing street, see "Limitation of Actions," § 32.

Sufficiency of findings by court, see "Trial," § 395.

### § 161. Actions for penalties.

#### Cross-References.

Appellate jurisdiction of actions to recover penalties as dependent on whether case involves freeholds, see "Courts," § 219.

Jurisdiction of justices of the peace in actions involving title to realty, see "Justices of the Peace," § 36.

### § 162. Criminal responsibility.

#### Cross-Reference.

Malicious prosecution, see "Malicious Prosecution," §§ 20-22.

### § 163.— Offenses.

(a) The willful obstruction of a road or a way constitutes an indictable offense only when the road is public and the obstruction tends to the inconvenience of the common right to use it.—*State v. Price*, 21 Md. 448.

### § 164.— Prosecution and punishment.

#### Cross-References.

Election between acts on trial, see "Criminal Law," § 678.

Former jeopardy, see "Criminal Law," § 196.

Grounds for continuance, see "Criminal Law," § 595.

Grounds for new trial, see "Criminal Law," § 935.

Limitations, see "Criminal Law," § 150.

Limiting number of witnesses, see "Criminal Law," § 676.

(a) The willful obstruction of a road or way constitutes an indictable offense only when the road or way is public, and the obstruction tends to the inconvenience of the common right to use it. An indictment for such an offense therefor must show that the obstructed road connected with, and was ac-

cessible from, a public highway.—*State v. Price*, 21 Md. 448.

(b) An indictment for obstructing a highway alleged, in the first count, the obstruction of a road "leading from S.'s gate to B.'s house," and, in the second count, the obstruction of a road "leading from S.'s gate toward the turnpike." A replication averring that the road ran "from S.'s gate to the turnpike" was held a departure from the indictment, as the former averred the existence of a public road, while the latter did not.—*State v. Price*, 21 Md. 448.

(c) An indictment charged that the accused, "on the 1st day of October, 1854," erected gates on a highway, "and did, on divers other days between that day and the time of taking this inquisition, continue and allow to remain the said" gates, "by reason whereof the citizens of this state, during the time aforesaid," could not go and ride, etc. Held, that the continuance of the nuisance was sufficiently charged to justify a judgment to abate it.—*Wroe v. State*, 8 Md. 416.

### (B) USE OF HIGHWAY AND LAW OF THE ROAD.

#### Cross-References.

Animals running at large, see "Animals," § 53.

Collisions of street cars with animals or vehicles, see "Street Railroads," §§ 90, 91.

Imputed negligence, see "Negligence," § 92.

Liability of owner of team for act of third person, see "Negligence," § 14.

Right of way over street railroad tracks, see "Street Railroads," § 85.

Statutory and municipal regulations relating to movement of trains across highways, see "Railroads," §§ 242-245.

Use of bridges, see "Bridges," § 30.

Use of private roads, see "Private Roads," § 11.

Use of street as highway, see "Municipal Corporations," §§ 702-707.

### § 165. Power to control and regulate.

### § 166. Statutory and local regulations.

#### Cross-References.

Appellate jurisdiction of suit involving question of constitutionality of act regulating speed of automobiles, see "Courts," § 219.

License taxes, see "Licenses," §§ 5, 7.

### § 167. Right to use.

### § 168.— In general.

## § 169.— Motor vehicles and bicycles.

### Cross-Reference.

See post, § 184.

### Annotation.

Right of bicyclists to use highway generally.—47 L. R. A. 289, note.

Validity of enactments restricting use of highway by bicyclist.—47 L. R. A. 290, note.

(a) New modes of using the highway being allowable whenever the general benefit requires them, the use of automobiles on the highway is allowable, if ordinary care, as determined by the circumstances, is exercised, and their use may be regulated by law.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875. [Cited and annotated in 48 L. R. A. (N. S.) 948, 962, 967, on liability of automobile operator as to horses; in 50 L. R. A. (N. S.) 569, on contributory negligence of driver of horse encountering automobile; in 22 L. R. A. (N. S.) 1232, on vicious character of horse as affecting liability for frightening it.]

(b) Under act 1890, c. 85, applicable to Kent and Queen Anne's counties, giving the county commissioners power to make reasonable rules for the use of a certain bridge, if they found as a fact that the riding of a bicycle over the bridge would likely frighten horses and imperil the lives of passengers, it was a reasonable exercise of their powers to forbid it.—*Twilley v. Perkins*, 77 Md. 252, 26 Atl. 286, 39 Am. St. Rep. 408, 19 L. R. A. 632. [Cited and annotated in 47 L. R. A. 291, on bicycle law; in 51 L. R. A. 218, on liability of officer for making arrest.]

### § 170. Character and control of horses.

(a) The fact that plaintiff, in an action for damages for personal injuries and injury to property caused by defendant's vehicle colliding with plaintiff's, was driving a team of horses, one of which was shown to have run away on a prior occasion, when it was frightened by some one squirting water on it, is not proof that plaintiff was not driving a reasonably safe horse.—*Vonderhorst Brewing Co. v. Amrhine*, 98 Md. 406, 56 Atl. 833. [Cited and annotated in 22 L. R. A. (N. S.) 1232, on vicious character of horse as affecting liability for frightening it; in 41 L. R. A. (N. S.) 323, 328, on rules of road governing vehicles proceeding in opposite directions; in 41 L. R. A. (N. S.) 348, on rules of road governing vehicles at intersection of and when turning across street.]

(b) The driver of a horse need not discon-

tinue his drive simply because the horse, which has always been gentle and easily managed, shows signs of being unruly.—*Creamer v. McIlvain*, 89 Md. 343, 43 Atl. 935, 45 L. R. A. 531, 73 Am. St. Rep. 186. [Cited and annotated in 22 L. R. A. (N. S.) 1232, on vicious character of horse as affecting liability for frightening it; in 23 L. R. A. (N. S.) 171, as to whether negligence inferable from mere fact that horse runs away.]

(c) The fact that a pair of colts, not three years old, and little used to harness, attempted to run away when the yoke strap broke and let the pole down with a loud report, does not show a tendency on their part to run away, existing five or six years later.—*Creamer v. McIlvain*, 89 Md. 343, 43 Atl. 935, 45 L. R. A. 531, 73 Am. St. Rep. 186. [Cited and annotated, see supra.]

### § 171. Care required in use of highway.

### § 172.— In general.

(a) One who uses the highway must exercise reasonable care to prevent injury to others using it.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875.

(b) A traveler on a highway, injured in a collision with the vehicle of another traveler, is entitled to recover for the injuries received, in case they resulted directly from the want of ordinary care on the part of the latter, and not from his own want of ordinary care directly contributing to the injury.—*Standard Oil Co. v. Hartman*, 102 Md. 563, 62 Atl. 805. [Cited and annotated in 41 L. R. A. (N. S.) 333, on rules of road governing vehicles proceeding in opposite directions.]

(c) The right of one driving on a highway to use any part of the highway must be exercised with reference to the rights of others, and one driving a heavy wagon, necessarily slow in being changed from its course in an emergency, ought to take such part of the highway as will afford to lighter vehicles the opportunity of passing it without colliding with it.—*Standard Oil Co. v. Hartman*, 102 Md. 563, 62 Atl. 805. [Cited and annotated, see supra.]

(d) The law imposes on the owner of a traction engine the duty to act with due regard for the rights and safety of persons traveling on a public road in moving the en-

gine over such road, and he is liable for injuries due to negligence on his part.—*Miller v. Addison*, 96 Md. 731, 54 Atl. 967.

**§ 173.—As to persons on foot.**

*Cross-Reference.*

See post, §§ 213, 214.

(a) The evidence showed that plaintiff, while walking beside his wagon, met defendant's cart, loaded with bricks, and drawn by a mule, no driver being in view, and that when directly opposite plaintiff the mule turned across the street, catching plaintiff between the cart and wagon, and seriously injuring him. It was not denied that plaintiff used every effort to avoid the accident. *Held*, that it was error to charge that plaintiff's contributory negligence prevented his recovery.—*Grabruess v. Klein*, 81 Md. 83, 31 Atl. 504.

**§ 174.—As to children and others under disability.**

(a) It is the duty of a deaf person to be more careful in keeping a lookout for passing vehicles than if his hearing were not defective.—*Fenneman v. Holden*, 75 Md. 1, 22 Atl. 1049. [*Cited and annotated* in 19 L. R. A. (N. S.) 163, on duty of pedestrian on public street to avoid passing teams; in 41 L. R. A. (N. S.) 193, 196, 202, on defective hearing as bearing upon contributory negligence.]

**§ 175. Meeting and crossing.**

*Cross-References.*

See ante, § 169.

In city streets, see "Municipal Corporations," § 705.

*Annotation.*

Rules of the road governing vehicles proceeding in opposite directions.—41 L. R. A. (N. S.) 322, note.

**§ 176. Overtaking and passing.**

*Cross-Reference.*

In city streets, see "Municipal Corporations," § 705.

*Annotation.*

Rule of the road governing vehicles proceeding in the same direction.—41 L. R. A. (N. S.) 337, note.

**§ 177. Excessive speed and racing.**

*Cross-Reference.*

In city streets, see "Municipal Corporations," § 705.

*Annotation.*

Regulation of speed of vehicles on streets.—36 L. R. A. 305, note.

**§ 178. Approaching railroad.**

**§ 179. Stopping and standing.**

*Cross-Reference.*

In city streets, see "Municipal Corporations," § 705.

(a) A stagecoach stopping for an unreasonable time on a public highway, in front of and obstructing the entrance of a camp-meeting ground, is a nuisance, and may be removed by those who are inconvenienced, or by a deputy sheriff.—*Turner v. Holtzman*, 54 Md. 148, 39 Am. Rep. 361. [*Cited and annotated* in 14 L. R. A. 557, on obstruction of street or sidewalk for business or building purposes; in 19 L. R. A. 196, on right to compensation for property destroyed in abating public nuisance; in 39 L. R. A. 651, 678, on municipal power over nuisances affecting highways and waters.]

**§ 180. Horses or other animals not under control, and runaways.**

*Cross-References.*

See ante, § 170; post, § 184.

Animals running at large, see "Animals," §§ 48-57.

In city streets, see "Municipal Corporations," § 705.

**§ 181. Frightening animals.**

*Cross-References.*

See ante, § 170; post, § 184.

Condition and use of property adjoining highway, see "Negligence," § 35.

In city streets, see "Municipal Corporations," § 705.

**§ 182. Injuries to highways.**

**§ 183. Liabilities for injuries.**

**§ 184. Actions for injuries.**

(a) A count of a declaration which alleged that the defendant, while engaged in hauling bales of paper stock to its mill, negligently loaded the same upon its wagon, and in consequence of the negligence the bales fell therefrom upon the public highway, and, lying there, frightened plaintiff's mules, causing them to run away to his injury, sufficiently charged the negligence of the defendant.—*Cecil Paper Co. v. Nesbitt*, 117 Md. 59, 83 Atl. 254.

(b) A count of a declaration which averred that bales of paper stock fell from defendant's wagon to the public road, and that the defendant, knowing the same had fallen from the wagon, negligently allowed them to remain thereon, and in consequence the



plaintiff was injured, *held*, sufficient as charging actionable negligence of the defendant.—*Cecil Paper Co. v. Nesbitt*, 117 Md. 59, 83 Atl. 254.

(c) A count in a declaration averring that the defendant's servant, acting within the reasonable line of his employment in hauling bales of paper stock over a public highway, discovered that a portion of the bales would not carry to the defendant's mills, but negligently proceeded with the load, and that before reaching the mills some of the bales fell from the wagon to the side of the highway, and in consequence the plaintiff's mules were frightened and ran away to the plaintiff's damage, sufficiently charged actionable negligence of the defendant.—*Cecil Paper Co. v. Nesbitt*, 117 Md. 59, 83 Atl. 254.

(d) Where in an action for negligence causing the fright and running away of the plaintiff's mules there was evidence that bales of paper stock caused to lie on the highway by defendant were responsible for the fright of the mules, evidence of a witness for the defendant as to the conduct of mules generally when frightened would not reflect on or tend to contradict the evidence that they were frightened, and was properly refused.—*Cecil Paper Co. v. Nesbitt*, 117 Md. 59, 83 Atl. 254.

(e) In an action for injuries resulting from plaintiff's horse becoming frightened, a witness who had testified that he knew and had taken care of the horse, and thought the horse unfit for a woman to drive, should be allowed to testify to what he had heard plaintiff's father say to plaintiff about the horse's traits.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875. [Cited and annotated in 48 L. R. A. (N. S.) 948, 962, 967, on liability of automobile operator as to horses; in 50 L. R. A. (N. S.) 569, on contributory negligence of driver of horse encountering automobile; in 22 L. R. A. (N. S.) 1232, on vicious character of horse as affecting liability for frightening it.]

(f) In an action for injuries resulting from plaintiff's horse becoming frightened by defendant's automobile, testimony that the automobile made more noise than any other that witness had ever heard was admissible.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875. [Cited and annotated, see *supra*.]

(g) In an action for injuries resulting from

defendant's failure, in operating an automobile, to perform the duty prescribed by statute on frightening animals, an instruction that the owner of an automobile has the same right as the owner of other vehicles to use the highways, and, like them, must exercise reasonable care for the safety of others, is properly refused, as such privilege is modified by the statute.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875. (See Code, art. 56, § 145; act 1916, c. 687, p. 1581.) [Cited and annotated, see *supra*.]

(h) In an action for injuries resulting from plaintiff's horse becoming frightened by defendant's automobile, a request to instruct that there was no legally sufficient evidence to entitle plaintiff to recover is properly rejected, where there was evidence that defendant did not comply with his statutory duty to go to the side of the road and remain stationary after he was aware that plaintiff's horse was frightened.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875. [Cited and annotated, see *supra*.]

(i) In an action for injuries resulting from plaintiff's horse becoming frightened by defendant's automobile, an instruction as to what would amount to ordinary care on defendant's part is not objectionable for failing to submit the question whether defendant had time, after discovering that plaintiff's horse was frightened, to comply with his statutory duty to go to the side of the street, there being evidence introduced by defendant showing that he actually went as close to the side of the street as he could with safety.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875. [Cited and annotated, see *supra*.]

(j) In an action for injuries resulting from plaintiff's horse becoming frightened by defendant's automobile, an instruction that there was not sufficient evidence to show that the automobile was making any unnecessary noise does not conflict with an instruction as to what defendant's duty would have been, in reference to the noise, had he gone to the side of the road and stopped.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875. [Cited and annotated, see *supra*.]

(k) The second instruction in an action was that certain acts by defendant, if found

to be true, constituted "want of ordinary care on the part of the defendant, as mentioned in the plaintiff's first prayer." *Held*, that, as the first prayer was objectionable, the second was also objectionable, as making the first a part of it, and allowing the jury to find that facts other than those stated showed want of ordinary care.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875. [Cited and annotated, see supra.]

(l) Code 1904, art. 56, § 135, provides that, if animals used on the highway are alarmed at a motor vehicle, the person in charge of such vehicle "shall go as far as practicable to the side of the road and remain stationary until the said horse or horses or other animals have passed a safe distance, in the meantime making as little noise as possible with the steam." Section 140 provides that "whenever the term 'motor vehicle' is used in this subtitle it shall be construed to include automobiles, locomobiles, and all other vehicles propelled otherwise than by muscular power," except those running on rails. *Held*, that a declaration alleging that plaintiff's horse was frightened by defendant's automobile, and that defendant did not go to the side of the road and stop and remain stationary, etc., making in the meantime as little noise as possible, was not demurrable for omitting from such allegations the words "as far as practicable," and the words "with the steam."—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875. (See Code 1911, art. 56, §§ 133, 134, 145; act 1916, c. 687, p. 1581.) [Cited and annotated, see supra.]

(m) In an action for injuries resulting from plaintiff's horse becoming frightened by defendant's automobile, where the declaration relied entirely on defendant's failure to take the precautions required under such circumstances by Code 1904, art. 56, § 135, an instruction was given that the verdict should be for plaintiff, if she was injured by being thrown from a carriage to which the horse was attached, and the horse was frightened by the automobile of defendant while operated by him, and the injury might have been avoided by ordinary care on defendant's part, unless the injury resulted from negligence of plaintiff directly contributing to it. *Held*, that the instruction

was objectionable, because it did not condition recovery on defendant's failure to use the care prescribed by the statute.—*Fletcher v. Dixon*, 107 Md. 420, 68 Atl. 875. (See Code 1911, art. 56, § 145; act 1916, c. 687, p. 1581.) [Cited and annotated, see supra.]

(n) In an action for injuries received by a traveler on a highway in a collision with the vehicle of another, defendant has the burden of proving contributory negligence on plaintiff's part.—*Standard Oil Co. v. Hartman*, 102 Md. 563, 62 Atl. 805. [Cited and annotated in 41 L. R. A. (N. S.) 333, on rules of road governing vehicles proceeding in opposite directions.]

(o) Evidence in an action for injuries received by a traveler on a highway in a collision with a vehicle of another traveler examined, and *held*, that the question of defendant's actionable negligence was for the jury.—*Standard Oil Co. v. Hartman*, 102 Md. 563, 62 Atl. 805. [Cited and annotated, see supra.]

(p) Evidence in an action for injuries received by a traveler on a highway in a collision with the vehicle of another traveler examined, and *held*, that the question of plaintiff's contributory negligence was for the jury.—*Standard Oil Co. v. Hartman*, 102 Md. 563, 62 Atl. 805. [Cited and annotated, see supra.]

(q) A requested charge in an action for damages for personal injuries and injury to property caused by defendant's vehicle colliding with plaintiff's which states to the jury that defendant's driver was using due care prior to the time of the accident, but ignores the fact that he might have been negligent at the time and place of the collision, is properly refused.—*Vonderhorst Brewing Co. v. Amrhine*, 98 Md. 406, 56 Atl. 833. [Cited and annotated in 22 L. R. A. (N. S.) 1232, on vicious character of horse as affecting liability for frightening it; in 41 L. R. A. (N. S.) 323, 328, on rules of road governing vehicles proceeding in opposite directions; in 41 L. R. A. (N. S.) 348, on rules of road governing vehicles at intersection of and when turning across street.]

(r) Where, in an action for damages for personal injuries and injury to property caused by defendant's vehicle colliding with plaintiff's, plaintiff proves that the vehicle belonged to defendant, the burden is on de-

defendant to show that the driver was not defendant's agent.—*Vonderhorst Brewing Co. v. Amrhine*, 98 Md. 406, 56 Atl. 833. [Cited and annotated, see supra.]

(s) In an action for damages for personal injuries and injury to property caused by defendant's vehicle colliding with plaintiff's, proof that the vehicle bore defendant's name satisfies an allegation that it was driven by an agent of defendant, in the absence of evidence to the contrary.—*Vonderhorst Brewing Co. v. Amrhine*, 98 Md. 406, 56 Atl. 833. [Cited and annotated, see supra.]

(t) Evidence in an action for damages for personal injuries and injury to property caused by defendant's vehicle colliding with plaintiff's examined, and whether defendant's driver was negligent held a question for the jury.—*Vonderhorst Brewing Co. v. Amrhine*, 98 Md. 406, 56 Atl. 833. [Cited and annotated, see supra.]

(u) Evidence in an action for damages for personal injuries and injury to property caused by defendant's vehicle colliding with plaintiff's examined, and whether plaintiff was guilty of contributory negligence held a question for the jury.—*Vonderhorst Brewing Co. v. Amrhine*, 98 Md. 406, 56 Atl. 833. [Cited and annotated, see supra.]

(v) In an action for injuries resulting from the running away of a horse, frightened by defendant's traction engine on a public highway, the court refused to instruct that the evidence was not sufficient to establish defendant's negligence, that defendant had a right to operate her engine on the highway, using due care, and that the verdict should be for her if she had used such care; but did instruct that plaintiff had the burden of proving defendant's negligence, and that unless he did prove it, the verdict should be for her. Held, that, if there was evidence tending to show defendant's negligence, she could not complain of the court's ruling.—*Miller v. Addison*, 96 Md. 731, 54 Atl. 967.

(w) Evidence examined in an action for injuries resulting from the running away of a horse frightened by a traction engine on a public highway, and held sufficient to make it a question for the jury whether defendant was guilty of negligence.—*Miller v. Addison*, 96 Md. 731, 54 Atl. 967.

(x) Where there was evidence to show the negligence of defendant's servant in driving close to a footpath through blinding dust, whereby plaintiff, a boy, was injured, an instruction that if the jury should find that plaintiff was guilty of want of care in hiding in the weeds on the side of the road, under the circumstances in evidence, he could not recover, unless the driver could have prevented the injury after seeing his danger, is erroneous, as assuming the fact that plaintiff was hiding, and as neglecting to submit the question of the driver's negligence.—*American Straw Board Co. v. Smith*, 94 Md. 19, 50 Atl. 414.

(y) Where there was evidence that defendant's servant negligently drove close to a footpath through blinding dust, thereby injuring plaintiff, an instruction that the driver was not bound to anticipate that plaintiff, a boy, was secreted or hidden in the weeds on the side of the road, is erroneous, as assuming that the boy was hiding, and failing to submit the question of the driver's negligence.—*American Straw Board Co. v. Smith*, 94 Md. 19, 50 Atl. 414.

(z) Plaintiff was hurrying to cross a street ahead of a street car, and on reaching the other side was struck by defendant's ice wagon, which was going in the opposite direction from the car. Defendant prayed for an instruction that, if plaintiff attempted to cross in front of the street car, and, having done so, was prevented by the ice wagon from going further, and was struck by it, he could not recover, though defendant's servant was negligent. Held, that, as the prayer made no reference to the care to be exercised by plaintiff, or defendant's servant, it was properly refused.—*Fenneman v. Holden*, 75 Md. 1, 22 Atl. 1049. [Cited and annotated in 19 L. R. A. (N. S.) 163, on duty of pedestrian on public street to avoid passing teams; in 41 L. R. A. (N. S.) 193, 196, 202, on defective hearing as bearing upon contributory negligence.]

(aa) Plaintiff was 75 years old, and deaf. He was hurrying to cross a street ahead of a street car, and on reaching the other side was struck by defendant's ice wagon, which was going in the opposite direction from the car. Defendant prayed for an instruction that, if plaintiff could have seen the wagon

in time to avoid the accident, he could not recover. The prayer made no allusion to any degree of care to which plaintiff ought to be held. *Held*, that it was properly refused.—*Fenneman v. Holden*, 75 Md. 1, 22 Atl. 1049. [Cited and annotated, see supra.]

(bb) In an action by a deaf person for injuries caused by being run down on the street, an instruction that the degree of care required of plaintiff to entitle him to recover was simply such as could reasonably be expected of an ordinarily prudent person in his situation was improperly granted, when it ignored plaintiff's deafness.—*Fenneman v. Holden*, 75 Md. 1, 22 Atl. 1049. [Cited and annotated, see supra.]

### § 185. Penalties for violations of regulations.

### § 186. Offenses incident to travel.

#### Cross-References.

Carrying weapons on highway, see "Weapons," § 9.

Commission of trespass, see "Trespass," § 80.

Driving automobile at excessive rate of speed, felony or misdemeanor, see "Criminal Law," § 27.

Indictment, certainty, see "Indictment and Information," § 71.

Shooting on highways, see "Weapons," § 15.

(a) Under act 1910, c. 207, amending Code 1904, art. 56, §§ 131-140, and adding §§ 140a-140i, 140k-140t, regulating motor vehicles, the provision in § 140p that offenders shall be tried before the nearest justice of the peace, the difference of only a short distance will not oust the justice first taking jurisdiction, and a warrant issued by a justice need not affirmatively show on its face that he was the nearest in point of actual distance.—*Crichton v. State*, 115 Md. 423, 81 Atl. 36. (See Code 1911, art. 56, §§ 143-157; *Id.* [vol. 3], art. 56, §§ 144, 150; act 1916, c. 687, p. 1581.)

(b) In a prosecution under act 1910, c. 207, amending Code 1904, art. 56, §§ 131-140, and adding §§ 140a-140i, 140k-140t, regulating motor vehicles, and providing in § 140p that the nearest justice shall have jurisdiction, and that, if the party be convicted, he shall indorse on the license certificate the date and particulars of the conviction, which must under § 139 be sent to

the commissioner of motor vehicles, who may revoke the operator's license, a warrant merely charging the reckless operation of a car, or that the accused failed to stop when met by C., who gave the lawful signal, should be more specific.—*Crichton v. State*, 115 Md. 423, 81 Atl. 36. (See Code 1911, art. 56, §§ 143-157; *Id.* [vol. 3], art. 56, §§ 144, 150; act 1916, c. 687, p. 1581.)

### (C) INJURIES FROM DEFECTS OR OBSTRUCTIONS.

#### Cross-References.

Defects in discontinued highway, see ante, § 78.

Accidents at railroad crossings, see "Railroads," §§ 298-353.

In bridges, see "Bridges," §§ 35-46.

Injuries by animals running at large, see "Animals," § 53.

In street railroad tracks, see "Street Railroads," § 86.

In streets, see "Municipal Corporations," §§ 755-826.

In turnpikes and toll roads, see "Turnpikes and Toll Roads," §§ 45-49.

Liability of railroad companies for injuries from defects in tracks, see "Railroads," § 362.

Liability of railroad company for injuries from defects in highway crossings, see "Railroads," § 303.

### § 187. Nature and grounds of liability.

(a) In an action for the death of one drowned while attempting to cross a mill pond by walking on the dam, it appeared that the dam crossed the pond in such a way as to approach at each end a public highway extending partially around the pond, that for 50 years the public had been accustomed to use the dam as a footway, that the dam was private property, and that the accident occurred at a sluiceway, over which loose planks had been placed for the convenience of employees. *Held*, that the dam was not a highway by prescription, so as to render the county liable.—*State v. Kent County Com'rs*, 83 Md. 377, 35 Atl. 62.

(b) Whenever an indictment lies for non-repair of a highway, an action on the case will lie at the suit of the party sustaining any peculiar damage.—*Anne Arundel County Com'rs v. Duckett*, 20 Md. 468, 83 Am. Dec. 557. [Cited and annotated in 22 L. R. A. 832, on personal liability of highway officers for negligence; in 39 L. R. A. 55, 81, on liability of counties for torts and negligence; in 44 L. R. A. 797, on municipal liability for false imprisonment and unlawful arrest.]

**§ 188. Care required as to condition of highway.**

**§ 189. Statutory provisions.**

**§ 190. Duty and ability to repair.**

(a) Where an approach to a bridge from which plaintiff fell and was injured had been uninterruptedly used by the public for over 20 years, and repairs had been made on it from time to time by the county, the duty of maintaining such approach in a safe condition was on the county commissioners.—*Garrett County Com'rs v. Blackburn*, 105 Md. 226, 66 Atl. 31. [Cited and annotated in 52 L. R. A. (N. S.) 148, on personal liability of highway officers for negligence.]

§§ 191-193. (See Analysis.)

**§ 194. Precautions against injury.**

*Cross-Reference.*

See "Bridges," § 41.

*Annotation.*

Duty of county or town to maintain barriers along rural highways or bridges.—42 L. R. A. (N. S.) 267, note.

Duty to provide barriers against abandoned highway.—37 L. R. A. (N. S.) 1158, note.

Duty to provide barriers to protect travelers from obstructions outside the highway.—20 L. R. A. (N. S.) 980, note.

(a) A municipality is not required to fence its roads or put up barriers to prevent travelers from straying from the highway, but if there is a dangerous place, rendering it unsafe for travelers in the absence of a railing or barrier, the want thereof may constitute a defect; but the danger must be of an unusual character, such as a bridge, declivity, excavation, steep bank, or deep water, and a space adjoining a road or street may be left without a barrier, although it is rough and entirely unsuitable for travel.—*Roth v. Highways Commission of Baltimore County*, 115 Md. 469, 80 Atl. 1031. [Cited and annotated in 52 L. R. A. (N. S.) 145, on personal liability of highway officers for negligence; in 42 L. R. A. (N. S.) 268, 270, on duty to maintain barriers along rural highways or bridges.]

**§ 195. Failure to prevent or remove obstruction.**

**§ 196. Proximate cause of injury.**

*Cross-Reference.*

See "Bridges," § 43.

*Annotation.*

What injuries may be deemed to be proximately caused by the absence of a guard rail.—18 L. R. A. (N. S.) 1135, note.

**§ 197. Contributory negligence of person injured.**

*Cross-References.*

Imputed negligence, see "Negligence," §§ 89-96.

Of parent as defense in statutory action for death of child, see "Death," § 24.

*Annotation.*

Driving blind horse as contributory negligence.—48 L. R. A. (N. S.) 141, note.

Intoxication amounting to contributory negligence.—47 L. R. A. (N. S.) 737, note.

Liability of township for defects in highways.—13 L. R. A. (N. S.) 1260, note.

(a) The fact that a person injured on a highway, by contact with a telegraph pole in close proximity to the traveled portion of the highway, was driving on the left side of the road, does not conclusively show contributory negligence.—*Phelps v. Board of Com'rs of Howard County*, 117 Md. 175, 82 Atl. 1058.

(b) Where plaintiff was injured by driving his wagon into a hole in a street which he had passed over but two days before the accident, and testified that he had then noticed the defective condition of the street, though he had not observed that particular defect, and that the hole could have been seen at a distance of a block or so, but that he did not see it because he was not looking, but talking with a companion, he was guilty of contributory negligence.—*Knight v. City of Baltimore*, 97 Md. 647, 55 Atl. 388.

(c) Where plaintiff sued for injuries caused by the defective condition of a highway, and it was shown that he knew of such defects, and could have avoided them by going through a field, but the road was not impassable or so out of repair that accident must necessarily result from an attempt to use it, he was entitled to recover if he used due care, and his opportunity for avoiding the danger by leaving the road ought not to be considered by the jury.—*Commissioners of Charles County v. Mandanyohl*, 93 Md. 150, 48 Atl. 1058.

(d) The standard of care required of travelers upon the highway is such care as persons of common prudence generally exercise.—*Harford County Com'rs v. Hamilton*, 60 Md. 340, 45 Am. Rep. 739. [Cited and annotated in 39 L. R. A. 55, 81, on liability of counties for torts and negligence.]

### § 198. Liabilities of local authorities and officers.

#### Cross-Reference.

Liability on official bond, see ante, § 97.

#### Annotation.

Liability of township for defects in highways.—13 L. R. A. (N. S.) 1219, note.

Liability of counties for torts and negligence as to highways.—39 L. R. A. 53, note.

Personal liability of highway officers for negligence.—22 L. R. A. 824, note.

(a) A county may be liable for an injury directly caused by negligently permitting defects in a public road.—*County Com'rs of Anne Arundel County v. Collison*, 122 Md. 91, 89 Atl. 325.

(b) Act 1910, c. 403, §§ 167a, 167b, 167c, 167d, 167e, 167h, and 167k, creating the office of county engineer for Kent county, does not divest the county commissioners of power and control over public roads to the extent of relieving them of the liability for an injury caused by a defect in a road imposed on them by Code Pub. Loc. Laws, art. 15, § 80, and Code, art. 25, §§ 1, 2, 4, and 7.—*Richardson v. Kent County Com'rs*, 120 Md. 153, 87 Atl. 747. [Cited and annotated in 52 L. R. A. (N. S.) 143, 148, on personal liability of highway officers for negligence.]

(c) That the county road commissioner appointed under act 1910, c. 403, is not appointed or subject to be removed by the county road commissioners does not determine their responsibility for the condition of the public roads.—*Richardson v. Kent County Com'rs*, 120 Md. 153, 87 Atl. 747. [Cited and annotated, see supra.]

(d) The county road engineer of Kent county appointed under act 1910, c. 403, is not liable for an injury caused by a defect in a public road due to his negligence.—*Richardson v. Kent County Com'rs*, 120 Md. 153, 87 Atl. 747. [Cited and annotated, see supra.]

(e) Act 1908, p. 359, c. 654, empowering the county commissioners of Anne Arundel county to control public roads and bridges, and authorizing them to levy taxes and furnish all material for their maintenance, does not relieve them of liability for the condition of roads and bridges, though all work is required to be done under supervision of

an engineer.—*Anne Arundel County Com'rs v. Carr*, 111 Md. 141, 73 Atl. 668. [Cited and annotated in 33 L. R. A. (N. S.) 1172, on burden of proof as to contributory negligence.]

(f) Where county commissioners had charge of the approach to a bridge on which plaintiff was injured by the commissioners' negligence in failing to keep the approach in proper repair, they were liable to plaintiff, though the county had no control of the bridge, and the commissioners were under no duty to repair it.—*Garrett County Com'rs v. Blackburn*, 105 Md. 226, 66 Atl. 31. [Cited and annotated in 52 L. R. A. (N. S.) 148, on personal liability of highway officers for negligence.]

(g) The liability of county commissioners for damages resulting from the defective condition of roads in their counties does not arise from the common law, but solely by implication from the provisions of Code 1888, art. 25, §§ 1, 2, giving county commissioners charge of and authority over roads within their respective counties.—*Baltimore County Com'rs v. Wilson*, 97 Md. 207, 54 Atl. 71, 56 Atl. 596. (See Code 1911, art. 25, §§ 1, 2; Id. [vol. 3], art. 25, § 2.) [Cited and annotated in 52 L. R. A. (N. S.) 147, on personal liability of highway officers for negligence.]

(h) Code 1888, art. 25, §§ 1, 2, provide that the county commissioners of each county shall have power to appoint road supervisors, shall have charge of the property owned by the county and of roads and bridges, and shall make such regulations for repairing and perfecting the same as they may deem necessary, etc. Act 1900, c. 685, §§ 188-199, create a board of road commissioners and provide generally that they shall perform certain duties relative to roads and bridges in the county; and declares specifically in § 195 that these road commissioners shall take charge of all roads and bridges in their respective districts, and shall see that no obstructions or injury is permitted on any road or bridge under their supervision, etc. *Held*, that, as the act of 1900 deprives the county commissioners of almost all of their authority relative to the construction, care, and repair of roads, it takes away the basis of their liability for injuries resulting from the defective condition of the roads.—*Baltimore*

*County Com'rs v. Wilson*, 97 Md. 207, 54 Atl. 71, 56 Atl. 596. (See Code 1911, art. 25, §§ 1, 2; *Id.* [vol. 3], art. 25, § 2. [Cited and annotated, see supra.]

(i) A road commissioner in the discharge of his regular duties is a public officer, and laborers employed to assist in the discharge of such duties are his servants, and not the agents or servants of the county commissioners.—*Anne Arundel County Com'rs v. Duvall*, 54 Md. 350, 39 Am. Rep. 393. [Cited and annotated in 22 L. R. A. 824, 832, 833, on personal liability of highway officers for negligence; in 39 L. R. A. 59, on liability of counties for torts and negligence; in 66 L. R. A. 128, on liability for acts of independent contractor where injuries result from employer's nonperformance of absolute duties.]

(j) County commissioners are not liable in damages for an injury sustained by a person traveling on a county road by reason of the negligence of a laborer employed by a road supervisor to assist him in repairing the road, such supervisor being an independent officer appointed in pursuance of law.—*Anne Arundel County Com'rs v. Duvall*, 54 Md. 350, 39 Am. Rep. 393. [Cited and annotated, see supra.]

(k) The right of action against the county commissioners for injuries resulting from the condition of the public roads is not taken away by act 1868, c. 299, § 8, which permits the bond of a road supervisor given for the faithful performance of his duties to be put in suit for the benefit of any person who may suffer by the negligence of such supervisor to keep the roads in his district in proper repair.—*Calvert County Com'rs v. Gibson*, 36 Md. 229. [Cited and annotated in 22 L. R. A. 832, on personal liability of highway officers for negligence; in 39 L. R. A. 55, 81, on liability of counties for torts and negligence.]

(l) The duty of keeping the roads in repair being imposed in general, but most comprehensive, terms on the county commissioners, and they having been supplied with ample means, and armed with coercive power, sufficient to meet and sustain their liabilities, they are liable for damages resulting from non-repair.—*Anne Arundel County Com'rs v. Duckett*, 20 Md. 468, 83 Am. Dec. 557. [Cited and annotated in 22 L. R. A. 832, on

personal liability of highway officers for negligence; in 39 L. R. A. 55, 81, on liability of counties for torts and negligence; in 44 L. R. A. 797, on municipal liability for false imprisonment and unlawful arrest.]

## § 199. Liabilities of abutting owners.

### Annotation.

Liability of abutting owner for injury to pedestrian by refuse on sidewalk.—29 L. R. A. (N. S.) 707, note.

Imposition on abutting owner of liability for injury by defects or obstruction in streets.—20 L. R. A. (N. S.) 540, note.

Liability for failure to guard coal hole or other opening in sidewalk for commercial purposes, while in use by a third person.—11 L. R. A. (N. S.) 993, note.

Liability of abutting property owner for injury caused by ice formed from water artificially turned across sidewalk.—9 L. R. A. (N. S.) 598; 28 L. R. A. (N. S.) 200, notes.

Liability of owner or occupant of abutting premises to one injured by reason of the former's failure to remove snow or ice from the sidewalk as required by a valid statute or ordinance.—6 L. R. A. (N. S.) 616, note.

Violation of ordinance requiring covering of sidewalks fronting buildings under construction as ground for private action.—5 L. R. A. (N. S.) 258, note.

Effect of imposition of duty to keep sidewalk in repair upon abutting owner to impose upon him liability for injuries.—3 L. R. A. (N. S.) 84, note.

## § 200. Liabilities of persons causing defects or obstructions.

### Cross-References.

Defects in street car tracks, see "Street Railroads," § 78.

Liability over to town for damages recovered by persons injured, see "Indemnity," § 13.

## § 201. Actions for injuries.

### Cross-Reference.

See ante, § 198.

## § 202.—Grounds and conditions precedent in general.

## § 203.—Notice of claim for injury.

### Cross-References.

Injuries from defects in bridges, see "Bridges," § 45.

Injuries from defects in railroad crossings, see "Railroads," § 342.

Injuries from defects in city streets, see "Municipal Corporations," § 812.

Necessity of presentation of claim to county board, see "Counties," § 213.

### Annotation.

Validity of requirement of notice of injury as condition of municipal liability.—36 L. R. A. (N. S.) 1136, note.

Applicability of rule requiring notice of injury as condition of municipal liability for personal injury on street or highway in case of injury to municipal employee.—28 L. R. A. (N. S.) 533, note.

Notice of claim and cause of injury from defects or obstructions in street.—20 L. R. A. (N. S.) 757, note.

Notice of claim for injury as essential to liability of town for injury by defects in highway.—13 L. R. A. (N. S.) 1228, note.

#### § 204.—Defenses.

(a) In an action for an injury caused by defendant's negligence to repair a highway, it is no excuse to say that another road could have been traveled without accident.—*Calvert County Com'rs v. Gibson*, 36 Md. 229. [Cited and annotated, see supra, § 198.]

#### § 205.—Jurisdiction and venue.

#### § 206.—Time to sue and limitations.

#### § 207.—Parties.

#### § 208.—Pleading.

(a) Allegations of negligence in a declaration held sufficiently specific, under Code 1904, art. 75, § 3.—*Phelps v. Board of Com'rs of Howard County*, 117 Md. 175, 82 Atl. 1058. (See Code 1911, art. 75, § 3.)

#### § 209.—Presumptions and burden of proof.

#### § 210.—Admissibility of evidence.

##### Cross-References.

Evidence admissible by reason of admission of similar evidence of adverse party, see "Evidence," § 155.

Opinion evidence, see "Evidence," §§ 483, 513.

#### § 211.—Sufficiency of evidence.

##### Cross-Reference.

Cause of death, see "Death," § 76.

(a) Evidence, in an action against a county for injury to a horse by a collision in a public highway, held, to show that a brush pile in the road did not proximately cause the collision.—*County Com'rs of Anne Arundel County v. Collison*, 122 Md. 91, 89 Atl. 325.

(b) A finding that a dangerous hole in a highway, whereby a traveler was injured, was due to the negligence of county commissioners, and not merely to a snow, is justified by evidence that the road at such place was

in an unsafe and dangerous condition a month before the snow, and that for the 10 days after the snow left, and before the accident, the road was considered out of repair and unsafe for persons to travel.—*Harford County Com'rs v. Hause*, 106 Md. 439, 67 Atl. 273.

(c) The fact that one of two persons riding together drove recklessly does not tend to show recklessness on the part of the other, who was driving three-quarters of an hour later, when the horses ran away and caused injuries to other travelers.—*Creamer v. McIlvain*, 89 Md. 343, 43 Atl. 935, 45 L. R. A. 531, 73 Am. St. Rep. 186. [Cited and annotated in 22 L. R. A. (N. S.) 1232, on vicious character of horse as affecting liability for frightening it; in 23 L. R. A. (N. S.) 171, as to whether negligence inferable from mere fact that horse runs away.]

#### § 212.—Damages.

#### § 213.—Questions for jury.

(a) In an action against a county for injuries to plaintiff's person, horse, wagon, and harness from a defective road, held, on the evidence, that the question of defendant's liability was for the jury.—*Board of Com'rs of Howard County v. Pindell*, 119 Md. 69, 85 Atl. 1041.

(b) The question of whether it is negligent to erect a telegraph pole in close proximity to the traveled portion of a highway is one of fact, and not of law.—*Phelps v. Board of Com'rs of Howard County*, 117 Md. 175, 82 Atl. 1058.

(c) In an action for injuries caused by plaintiff's team sliding from the road over an unguarded embankment into a ditch, held, on the evidence, that the question of the negligence of a highway commission, charged by act 1904, c. 465, as amended by act 1908, c. 493, applicable to Baltimore county, with the duty of keeping streets in proper condition and repair and reasonably safe for public travel, was for the jury.—*Roth v. Highways Commission of Baltimore County*, 115 Md. 469, 80 Atl. 1031. [Cited and annotated in 52 L. R. A. (N. S.) 145, on personal liability of highway officers for negligence; in 42 L. R. A. (N. S.) 268, 270, on duty to maintain barriers along rural highways or bridges.]

(d) On evidence in an action for injuries caused by defendant's neglect to properly



protect the end of a culvert under a highway, *held*, that plaintiff's contributory negligence in driving off the traveled road and so near the edge of an embankment that the team slipped over was for the jury.—*Roth v. Highways Commission of Baltimore County*, 115 Md. 469, 80 Atl. 1031. [Cited and annotated, see *supra*.]

(e) Where it was shown that plaintiff broke his leg by stepping in a hole which defendants knew existed in a road which it was their duty to keep in repair, and on which plaintiff had a right to travel, an instruction that there was "no evidence in the case which would entitle plaintiff to recover" was properly refused.—*Commissioners of Charles County v. Mandanyohl*, 93 Md. 150, 48 Atl. 1058.

(f) The negligence claimed was leaving a large rock, around which considerable blasting had been done, overhanging a road which was constructed along a mountain side. Plaintiff testified that, as he was driving under the rock, stones fell from under it, one of which struck his horse. There was evidence that the stone beneath the rock was seamy and loose. *Held*, that the question of defendant's negligence was for the jury.—*Rowe v. Baltimore & O. R. Co.*, 82 Md. 493, 33 Atl. 761. [Cited and annotated in 51 L. R. A. (N. S.) 582, on opinion evidence as to safety of place or appliance.]

(g) It was proper to refuse to charge that if plaintiff knew the road, and voluntarily, on a dark night, walked along close to the unprotected edge, when, by taking the middle or inner side, the accident could have been prevented, he did not exercise the care entitling him to recover, as that was a question for the jury.—*Alleghany County Com'rs v. Broadwaters*, 69 Md. 533, 16 Atl. 223. [Cited and annotated in 39 L. R. A. 55, 81, on liability of counties for torts and negligence.]

(h) It was proper to refuse to charge that plaintiff could not recover if, knowing the condition of the road, he failed to carry a light, especially as the accident resulted from the permanent defective condition of the highway.—*Alleghany County Com'rs v. Broadwaters*, 69 Md. 533, 16 Atl. 223. [Cited and annotated, see *supra*.]

## § 214.—Instructions.

(a) An instruction that if a road or approach to a county bridge over the Potomac river on the Maryland side thereof was negligently left to remain by defendants, county commissioners, in an unsafe and unprotected condition for persons traveling over such approach, and plaintiff while walking over the same in the exercise of due care was thrown to the ground and injured by reason of the unsafe and defective condition of the highway, she was entitled to recover, was proper.—*Garrett County Com'rs v. Blackburn*, 105 Md. 226, 66 Atl. 31. [Cited and annotated in 52 L. R. A. (N. S.) 148, on personal liability of highway officers for negligence.]

(b) An instruction that, if the accident was caused by the fright of plaintiff's mules, the verdict must be for defendants, unless the fright was caused by a defect in the road manifestly calculated to frighten horses of ordinary gentleness, and defendants knew, or might have known, of it in time to have it repaired, is error as to plaintiff, as the fright of the mules was not the negligence of plaintiff unless caused by his carelessness.—*Kennedy v. Cecil County Com'rs*, 69 Md. 65, 14 Atl. 524. [Cited and annotated in 39 L. R. A. 44, 81, on liability of counties for torts and negligence; in 8 L. R. A. (N. S.) 79, on municipal liability for injury by frightening horse on defective highway.]

(c) It is error, as to plaintiff, to charge that if the injury was caused by the want of ordinary care and caution on his part, or the part of any of his servants, he cannot recover, though the road was out of repair at the time, since the charge ignores the doctrine of remote and proximate causes.—*Kennedy v. Cecil County Com'rs*, 69 Md. 65, 14 Atl. 524. [Cited and annotated, see *supra*.]

(d) In an action for injuries received while walking along a highway at night, by falling over a precipice left unprotected, it was conceded that the court properly charged that if the road was negligently constructed, and left in an unsafe condition for travel, and plaintiff was injured, while exercising due care, by reason of said unsafe condition, plaintiff was entitled to recover. *Held*, that it was proper to refuse to charge that, if

plaintiff knew there was no guard, and was unable to see the road and its surroundings solely by reason of the darkness, and walked off the embankment, he could not recover.—*Alleghany County Com'rs v. Broadwaters*, 69 Md. 533, 16 Atl. 223. [Cited and annotated, see *supra*, § 213.]

(e) In an action for an injury caused by a defective highway, a prayer for an instruction that if the jury find "that the alleged bad road on which plaintiff's wagon was broken could have been avoided by use of another road leading to said wharf, which was in good condition, and but a short distance further, and had been used by the public for about 20 years, then plaintiff did not use due care and diligence, and is not entitled to recover," is defective, in not submitting to the jury the question whether there was any knowledge on the part of plaintiff that the one road was dangerous while the other was safe. Besides, is was no excuse for defendant to say that another road could have been traveled without accident.—*Calvert County Com'rs v. Gibson*, 36 Md. 229. [Cited and annotated in 22 L. R. A. 832, on personal liability of highway officers for negligence; in 39 L. R. A. 55, 81, on liability of counties for torts and negligence.]

§ 215.— Verdict and findings.

§ 216.— Appeal and error.

### HINDERING CREDITORS.

#### Cross-References.

As act of bankruptcy, see "Bankruptcy," §§ 55-64.

As act of insolvency, see "Insolvency," § 25.

As ground for attachment, see "Attachment," §§ 21-48.

By fraudulent assignment, see "Assignments for Benefit of Creditors," §§ 140-162.

By fraudulent conveyances, see "Fraudulent Conveyances."

### HINDERING OFFICER.

#### Cross-Reference.

See "Obstructing Justice."

### HIRING.\*

#### Cross-References.

In general, see "Bailment."

Of animals in general, see "Animals," § 27.

Of convicts, see "Convicts," §§ 7-13.

Of horses and vehicles, see "Livery Stable Keepers," §§ 10-12.

Of premises, see "Landlord and Tenant."

Of servants, see "Master and Servant," §§ 1-9.

Of slaves, see "Slaves," § 8.

### HISTORY.\*

#### Cross-Reference.

Judicial notice of historical facts, see "Evidence," § 11.

### HOGS.\*

#### Cross-References.

See "Animals."

Power of city to regulate keeping of, see "Municipal Corporations," § 604.

### HOISTWAYS.

#### Cross-Reference.

Master's liability for injuries to servant, see "Master and Servant," § 117.

### HOLDERS.\*

#### Cross-Reference.

Of bills and notes, see "Bills and Notes."

### HOLDING COMPANIES.\*

#### Cross-Reference.

Taxation of, see "Taxation," § 164.

### HOLDING OUT.\*

#### Cross-References.

As agent, see "Principal and Agent," §§ 98-116.

As partner, after dissolution, see "Partnership," § 293.

### HOLDING OVER.\*

#### Cross-References.

By officer, see "Clerks of Courts," § 7; "Counties," §§ 43, 65; "Judges," § 9; "Justices of the Peace," § 8; "Municipal Corporations," § 149; "Officers," § 54; "Schools and School Districts," §§ 48, 53; "Sheriffs and Constables," § 12; "States," § 51.

By tenant, see "Landlord and Tenant," §§ 90, 114, 115, 118, 119, 196.

\*Annotation: Words and Phrases, same title.

## HOLIDAYS.\*

*Scope-Note.*

[INCLUDES days designated by law, other than Sunday, for suspension of ordinary business or judicial or other official proceedings; and effect of violations of such laws on validity of acts, transactions, and proceedings affected, and on the rights and remedies of persons engaged therein.

[EXCLUDES restrictions on grounds other than the character of the day, such as regulation of sale of intoxicants (see "*Intoxicating Liquors*"); and omission of holiday in computation of time (see "*Time*"; and particular acts and proceedings under other heads).

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Days appointed.
- § 2. Half holidays.
- § 3. Holidays falling on Sunday.
- § 4. Private acts and transactions.
- § 5. Judicial proceedings.
- § 6. Official acts.

*Cross-References.*

See "Sunday."

Adjournment of tax sale over holiday, see "Taxation," § 663.

Continuance in justice's court, see "Justices of the Peace," § 54.

Detention of prisoner on holiday as false imprisonment, see "False Imprisonment," § 8.

Discharge of jury as former jeopardy, see "Criminal Law," § 185.

Exclusion in computation of time, see "Time," § 10.

Power of city to regulate, see "Municipal Corporations," § 595.

Regulations as to sale of intoxicating liquors on holidays, see "Intoxicating Liquors," §§ 120, 145, 163.

Suspension of criminal trials during holidays as denying right to speedy trial, see "Criminal Law," § 573.

Uniformity of operation of statutory regulation, see "Statutes," § 93.

*Annotation.*

Validity of court business transacted on legal holiday.—10 L. R. A. (N. S.) 791, note.

How far the law of holidays extends to matters other than those relating to negotiable paper.—19 L. R. A. 316, note.

§§ 1-3. (See Analysis.)

**§ 4. Private acts and transactions.**

(a) Code 1888, art. 13, § 9, establishing February 22nd as a legal holiday, and providing that it shall be treated as Sunday only as regards the presenting of bills of exchange, checks, etc., does not make such day a "dies non," and an act done on it is as effective as if done on any other day.—*Handy v. Maddox*, 85 Md. 547, 37 Atl. 222. (See Code 1911, art. 13, § 9; act 1916, c. 633, p. 1318.)

§§ 5, 6. (See Analysis.)

**HOLOGRAPHIC WILLS.\***

*Cross-Reference.*

See "Wills," §§ 130-135.

**HOME.\***

*Cross-References.*

See "Domicile"; "Homestead."

**HOME FOR FRIENDLESS.\***

*Cross-Reference.*

See "Asylums," § 1.

\*Annotation: Words and Phrases, same title.

**HOMESTEAD.\****Scope-Note.*

[INCLUDES exemption from forced sale, for payment of debts, of real property of debtors, as constituting the family residence; constitutional and statutory provisions for such exemption; nature, grounds, and extent thereof in general; who are entitled to benefit of such exemptions; acquisition, selection, declaration, and establishment of homestead; quantity or value of property exempt; as to what liabilities homesteads are exempt; waiver or forfeiture of right of exemption, abandonment, alienation, devise, or descent of homestead; rights of devisees, heirs, or surviving members of family; and duration and termination of exemption; and protection and enforcement of the right.

[EXCLUDES exemption from forced sale of property of debtors in general (see "*Exemptions*"); rights of widow in real property of deceased husband (see "*Dower*"); and acquisition of public lands under homestead laws (see "*Public Lands*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Nature, Acquisition, and Extent.****(A) NATURE, CREATION, AND DURATION OF ESTATE OR RIGHT IN GENERAL.**

- § 1. Nature of estate or right.
- § 2. What law governs.
- § 3. Constitutional and statutory provisions.
- § 4. Validity of statutes.
- § 5. Construction of homestead laws in general.
- § 6. Retroactive operation.
- § 7. — Liabilities and liens existing before homestead law.
- § 8. — Liabilities existing before acquisition or establishment of homestead.
- § 9. Effect of change or repeal of homestead exemption.
- § 10. — Rights of debtors.
- § 11. — Rights of creditors.
- § 12. Nature and extent of right created.
- § 13. Existence of more than one homestead.
- § 14. Effect of ownership of other property.
- § 15. Duration and termination.

**(B) PERSONS ENTITLED.**

- § 16. Debtors or defendants.
- § 17. Family relation in general.
- § 18. Head of family and members thereof.
- § 19. Householders.
- § 20. Housekeepers.
- § 21. Married women.
- § 22. Children.
- § 23. Unmarried persons.
- § 24. Citizenship.
- § 25. Residence.
- § 26. — Domicile in general.
- § 27. — Residing with family.
- § 28. — Absence or removal.

\*Annotation: Words and Phrases, same title.

**I. Nature, Acquisition, and Extent—Continued.****(C) ACQUISITION AND ESTABLISHMENT.**

- § 29. Acquisition and selection of property in general.
- § 30. Constitutional and statutory provisions.
- § 31. Intent in acquisition and occupancy.
- § 32. Necessity of occupancy.
- § 33. Character and mode of occupancy.
- § 34. Purpose of occupancy and use of property.
- § 35. — In general.
- § 36. — Business homestead.
- § 37. Extent of occupancy.
- § 38. Selection and dedication in general.
- § 39. Designation in conveyance.
- § 40. Entry on record of title.
- § 41. Declaration or certificate.
- § 42. — Necessity.
- § 43. — Form and contents.
- § 44. — Execution.
- § 45. — Acknowledgment.
- § 46. — Recording.
- § 47. — Construction and operation.
- § 48. Proceedings for allotment.
- § 49. — Necessity.
- § 50. — Nature and form.
- § 51. — Application and proceedings thereon in general.
- § 52. — Appraisal, survey, and setting apart.
- § 53. — Review.
- § 54. — Operation and effect.
- § 55. Time of acquisition of homestead exemption.
- § 56. Change of homestead.
- § 57. Evidence.
- § 57½. Questions for jury.

**(D) PROPERTY CONSTITUTING HOMESTEAD.**

- § 58. Nature of property in general.
- § 59. Manner of acquisition.
- § 60. Character as homestead.
- § 61. Amount or extent.
- § 62. — In general.
- § 63. — Homestead in city, town, or village.
- § 64. — Effect of incorporation or extension of city, town, or village.
- § 65. Value.
- § 66. — In general.
- § 67. — In city, town, or village.
- § 68. — Effect of increase or depreciation.
- § 69. Form and physical characteristics.
- § 70. Separate tracts or lots.
- § 71. Part of tract, lot, or building.
- § 72. Appurtenances.
- § 73. Improvements and additions.

**I. Nature, Acquisition, and Extent—Continued.**

(D) PROPERTY CONSTITUTING HOMESTEAD—Continued.

- § 74. Rents, profits, and products.
- § 75. Proceeds of homestead.
- § 76. — In general.
- § 77. — Voluntary sale, exchange, or mortgage.
- § 78. — Involuntary conversion.
- § 79. — Proceeds of insurance.
- § 80. — Property purchased with proceeds.
- § 81. Ownership, estate, or interest in property in general.
- § 82. Life estates.
- § 83. Leaseholds.
- § 84. Property of tenants in common and joint tenants.
- § 85. Partnership property.
- § 86. Community property.
- § 87. Wife's separate property.
- § 88. Equitable estates and interests.
- § 89. Different homesteads in same property.

(E) LIABILITIES ENFORCEABLE AGAINST HOMESTEAD.

- § 90. Exceptions from exemptions in general.
- § 91. Constitutional and statutory provisions.
- § 92. Exception of pre-existing liabilities and liens.
- § 93. — In general.
- § 94. — Liabilities existing before acquisition of property.
- § 95. — Liabilities existing before establishment of homestead.
- § 96. Purchase money and lien or mortgage therefor.
- § 97. Claims and liens for creation, improvement, or preservation of property.
- § 98. Wages and materials.
- § 99. Loans and advances.
- § 99½. Credit extended without notice of homestead character of property.
- § 100. Liabilities for torts.
- § 101. Alimony.
- § 102. Judgments.
- § 103. — In general.
- § 104. — Enforcement after termination of homestead.
- § 105. Debts to government.
- § 106. Proceedings for enforcement of claims.
- § 107. — In general.
- § 108. — Exhaustion of other property before resort to homestead.
- § 109. — Disposition of proceeds.

**II. Transfer or Incumbrance.**

- § 110. Power to transfer or incumber in general.
- § 111. Constitutional and statutory provisions.
- § 112. Sale or exchange.
- § 113. Conveyance or mortgage between husband and wife.
- § 114. Lease.
- § 115. Mortgage.
- § 116. Creation of lien.

**II. Transfer or Incumbrance—Continued.**

- § 117. Consent of husband or wife.
- § 118. Joinder of husband and wife in deed or mortgage.
- § 119. Acknowledgment of deed or mortgage.
- § 120. Order of court.
- § 121. Sale on foreclosure.
- § 122. Estoppel to assert invalidity.
- § 123. Ratification.
- § 124. Effect of termination of homestead.
- § 125. Value in excess of homestead.
- § 126. Conveyance subject to homestead.
- § 127. Rights of purchasers and mortgagees.
- § 128. — In general.
- § 129. — Bona fide purchasers.
- § 130. Avoidance.
- § 131. — In general.
- § 132. — Restoration of consideration.
- § 133. — Cancellation of instrument.

**III. Rights of Surviving Husband, Wife, Children, or Heirs.**

- § 134. Continuance or transmission of estate or right in general.
- § 135. Constitutional and statutory provisions.
- § 136. Devise or other testamentary disposition.
- § 137. Existence of other interest in property.
- § 138. Election between homestead and distributive share or year's support.
- § 139. Nature of estate or right in general.
- § 140. Rights of surviving husband.
- § 141. Rights of surviving wife.
- § 142. Rights of children or heirs.
- § 143. Rights as between surviving spouse and children or heirs.
- § 144. Duration and termination in general.
- § 145. Abandonment, waiver, forfeiture, or release.
- § 146. Transfer or incumbrance.
- § 147. Subsequent marriage.
- § 148. Majority of children.
- § 149. Continuance of occupancy.
- § 150. Proceedings for selection and allotment.
- § 151. Property subject to appropriation as homestead.
- § 152. Amount, extent, and value.
- § 153. Enforcement of claims after termination of homestead.

**IV. Abandonment, Waiver, or Forfeiture.**

- § 154. Loss or relinquishment of right in general.
- § 155. Constitutional and statutory provisions.
- § 156. Separation of family.
- § 157. — In general.
- § 158. — Divorce.
- § 159. — Death.
- § 160. Removal from homestead.
- § 161. — In general.

**IV. Abandonment, Waiver, or Forfeiture—Continued.**

- § 162. — Intent to return.
- § 163. — Acts constituting abandonment.
- § 164. — Acquisition of other domicile or homestead.
- § 165. Change in character or use of property.
- § 166. Declaration or notice of abandonment.
- § 167. Sale and conveyance.
- § 168. Lease.
- § 169. Power to waive.
- § 170. Contracts waiving right in general.
- § 171. Mortgage or other incumbrance as waiver of right.
- § 172. Consent to levy and sale.
- § 173. Revocation of waiver.
- § 174. Operation and effect of waiver.
- § 175. — In general.
- § 176. — As to other creditors.
- § 177. Estoppel to claim homestead.
- § 178. Forfeiture.
- § 179. — In general.
- § 180. — Fraudulent conveyance.
- § 181. Evidence.
- § 181½. Questions for jury.

**V. Protection and Enforcement of Rights.**

- § 182. Establishment of right of exemption in general.
- § 183. Statutory provisions.
- § 184. Process or other proceedings as against which exemption may be allowed.
- § 185. — In general.
- § 186. — Levy of attachment or execution.
- § 187. — Judicial sales in general.
- § 188. — Foreclosure proceedings.
- § 189. — Setting aside fraudulent conveyance.
- § 190. Duties of officer making levy.
- § 191. Necessity for claim.
- § 192. Persons who may claim.
- § 193. Time for making claim.
- § 194. Form and requisites of claim.
- § 195. Presentation and filing of claim.
- § 196. Selection of homestead.
- § 197. Contest and determination of claim.
- § 198. Allotment.
- § 199. — Proceedings in general.
- § 200. — Appraisal, survey, and setting apart.
- § 201. — Operation and effect.
- § 202. Retaining property beyond exemption on payment of excess.
- § 203. Sale of property subject to homestead.
- § 204. Successive exemptions.
- § 205. Failure to make claim.
- § 206. Denial or infringement of rights.



**V. Protection and Enforcement of Rights—Continued.**

- § 207. Motions and other summary remedies.
- § 208. Actions and defenses.
- § 209. — Nature and form of remedy.
- § 209½. — Grounds.
- § 210. — Jurisdiction.
- § 211. — Time to sue and limitations.
- § 212. — Parties.
- § 213. — Pleading.
- § 214. — Evidence.
- § 215. — Damages.
- § 216. — Trial.
- § 217. — Judgment and enforcement thereof.
- § 218. — Review.

*Cross-References.*

- |  |   |
|--|---|
| <p>Abatement of proceedings for selection and allotment of homestead on death of homesteader, by pendency of partition proceedings, see "Abatement and Revival," § 8.</p> <p>Absolute deed of homestead as mortgage, see "Mortgages," § 33.</p> <p>Acceptance of homestead as bar to widow's allowance, see "Executors and Administrators," § 187.</p> <p>Acknowledgment, to declaration of homestead, as judicial act, see "Acknowledgment," § 8.</p> <p>Administration sale of homestead, see "Executors and Administrators," §§ 329, 349, 377, 383, 388, 404.</p> <p>Administrator of homesteader as party aggrieved, giving right of review, see "Appeal and Error," § 151.</p> <p>Allowances to surviving wife, husband or children from estate of decedent, see "Executors and Administrators," §§ 173-201.</p> <p>Application of payments as affecting liability of homestead, see "Payment," §§ 41, 43.</p> <p>As assets of estate, see "Executors and Administrators," §§ 53, 72, 131, 495.</p> <p>As property available for payment of decedent's debts, see "Executors and Administrators," § 271.</p> <p>Assessments for public improvements, see "Municipal Corporations," §§ 434, 586.</p> <p>Assignment of homestead to wife on divorce, see "Divorce," § 249.</p> <p>As subject to partition, see "Partition," § 12.</p> <p>Attempt to enforce indebtedness against homestead as tort, see "Torts," § 14.</p> <p>Class legislation relating to homestead, see "Constitutional Law," § 208.</p> <p>Contracts to devise homestead, see "Wills," § 58.</p> <p>Conveyance of homestead and other property invalid as to homestead, see "Deeds," § 49.</p> <p>Defense to action against devisee of homestead for debts of testator, see "Wills," § 847.</p> | <p>Determination of homestead rights in action to enjoin extension of city limits, see "Municipal Corporations," § 33.</p> <p>Domicile of homesteader as fixed by operation of law, see "Domicile," § 5.</p> <p>Effect of assignment for creditors, see "Assignment for Benefit of Creditors," §§ 62, 244, 358.</p> <p>Effect of bankruptcy, see "Bankruptcy," §§ 395-400.</p> <p>Effect of including in inventory of homesteader's estate, see "Executors and Administrators," § 72.</p> <p>Effect of part performance of oral contract to devise homestead, see "Specific Performance," § 41.</p> <p>Effect of warranty clause in conveyance of homestead by husband alone, see "Covenants," § 2.</p> <p>Election between homestead and dower, see "Dower," § 59.</p> <p>Election between homestead and provision of will, see "Wills," §§ 782, 800-802.</p> <p>Equitable relief from judgment in proceeding to protect homestead, see "Judgment," §§ 443, 446, 460.</p> <p>Exemption of personal property, see "Exemptions."</p> <p>Existence of homestead in land as defect in vendor's title defeating contract of sale, see "Vendor and Purchaser," § 134.</p> <p>Failure to set off homestead in connection with inadequacy of price, as ground for setting aside execution sale, see "Execution," § 251.</p> <p>Homestead acquired by feme sole as constituting separate estate after marriage, see "Husband and Wife," § 115.</p> <p>Homestead as subject of fraudulent conveyance, see "Fraudulent Conveyances," §§ 38, 52, 268, 313.</p> <p>In public lands, see "Public Lands," §§ 35, 135, 136, 172.</p> <p>Judgment in real action against married woman for possession, subject to defendant's right of homestead, see "Entry, Writ of," § 23.</p> |
|--|---|

- Judicial notice of subdivisions of town and city property to determine land covered by exemption, see "Evidence," § 10.
- Laws impairing vested rights, see "Constitutional Law," § 99.
- Limitations under general statutes as affecting homestead rights, see "Limitation of Actions," §§ 19, 44, 60, 126, 143, 155, 167.
- Marshaling assets on enforcement of claims against homestead, see "Marshaling Assets and Securities," § 3.
- Matters affecting jurisdiction of courts over homestead in general, see "Courts," §§ 121, 155, 219, 231, 472.
- Mechanics' liens on homestead, see "Mechanics' Liens," §§ 14, 62, 73, 161.
- Parol agreement by husband and wife to convey homestead, see "Frauds, Statute of," § 72.
- Persons bound by decree in rem setting aside homestead, see "Judgment," § 812.
- Questions relating to dower as affected by homestead, see "Dower," §§ 12, 28, 51, 57, 82.
- Removal of cloud from title, see "Quieting Title," § 7.
- Right of action by husband or wife or both in relation to homestead, see "Husband and Wife," §§ 207, 209.
- Rights of bona fide holder of purchase money note on fictitious sale of homestead intended as mortgage, see "Vendor and Purchaser," § 261.
- Right to trial by jury on issue as to abandonment of homestead, see "Jury," § 14.
- Sale to pay debts of decedent, see "Executors and Administrators," § 329.
- Self-executing constitutional provisions, see "Constitutional Law," §§ 33, 34.
- Separate examination of wife on taking acknowledgment of conveyance, see "Acknowledgment," § 25.
- Setting aside homestead for occupancy pending administration, see "Executors and Administrators," § 175.
- Statutes, subjects and titles, see "Statutes," § 115; identification of act as amended, see "Statutes," § 138.
- Subrogation to lien on homestead, see "Subrogation," §§ 23, 25.
- Taxes on homestead and enforcement thereof, see "Taxation," §§ 507, 631, 641, 647, 670, 697, 752, 814, 824.
- Title and possession of homestead to support trespass, see "Trespass," § 20.
- Transfer of homestead by infants, see "Infants," §§ 26, 31.
- Validity of retrospective laws affecting husband's power over existing homestead, see "Constitutional Law," § 190.
- Way of necessity over homestead, see "Easements," § 18.

## I. NATURE, ACQUISITION, AND EXTENT.

§§ 1-109. (See Analysis.)

### Cross-References.

- Constitutional provisions providing for homestead exemptions as self-executing, see "Constitutional Law," § 33.
- Identification of act amended, see "Statutes," § 138.
- Subject and titles of acts, see "Statutes," § 115.

### Annotation.

- Is money loaned to improve land part of the purchase price within the rule that a purchase money lien takes priority over homestead rights.—41 L. R. A. (N. S.) 89, note.
- Right to claim homestead in property used as a hotel or boarding house.—41 L. R. A. (N. S.) 303, note.
- Mortgage to secure money advanced to purchase property as a purchase money mortgage not subject to homestead rights.—40 L. R. A. (N. S.) 275, note.
- Crops grown on homestead, or proceeds thereof, as exempt.—32 L. R. A. (N. S.) 577, note.
- Money decree for permanent alimony or separate maintenance as lien on homestead.—25 L. R. A. (N. S.) 137, note.
- Does homestead attach to the surplus upon foreclosure of a lien paramount to the homestead right.—18 L. R. A. (N. S.) 491, note.

- Exemption of homestead from liability for torts.—24 L. R. A. 789; 16 L. R. A. (N. S.) 947, notes.
- What constitutes a "family" under the homestead and exemption laws.—4 L. R. A. (N. S.) 366, note.
- Rights of child in parent's homestead.—56 L. R. A. 34, note.
- Exemption of proceeds of homestead sold for reinvestment.—19 L. R. A. 36, note.
- Exemption of property obtained in exchange for homestead.—19 L. R. A. 38, note.
- Exemption of proceeds of sale of homestead.—19 L. R. A. 39, note.
- Self-executing constitutional provisions as to exemption.—16 L. R. A. 284, note.

## II. TRANSFER OR INCUMBRANCE.

§§ 110-133. (See Analysis.)

### Cross-References.

- Bar of debt as affecting security, see "Limitation of Actions," § 167.
- Capacity of infant wife to consent, see "Infants," § 26.
- Contract or consent as prerequisite to mechanic's lien, see "Mechanics' Liens," §§ 62, 73.
- Effect of nonjoinder of wife of assignor in assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 62.
- Homestead in public lands, see "Public Lands," § 135.
- Validity as to creditors, see "Fraudulent Conveyances," § 52.

*Annotation.*

Conveyance, or encumbrance of homestead during insanity of one of the spouses.—13 L. R. A. (N. S.) 430, note.

Constructive trust in deed of homestead by husband to wife, with proviso attempting to derogate from her right of survivorship.—1 L. R. A. (N. S.) 312, note.

Effect of conveyance of homestead by husband to wife.—69 L. R. A. 379, note.

### III. RIGHTS OF SURVIVING HUSBAND, WIFE, CHILDREN, OR HEIRS.

§§ 134-153. (See Analysis.)

*Cross-References.*

Exclusive or concurrent jurisdiction of courts, see "Courts," § 472.

Jurisdiction of courts of general original jurisdiction, see "Courts," § 155.

Partition as between surviving spouse and children or other heirs, see "Partition," § 12.

Right to surplus proceeds of administration sale, see "Executors and Administrators," § 404.

*Rights of surviving wife.*

Antenuptial agreements affecting rights, see "Husband and Wife," §§ 28-31.

Assignment of dower rights and homestead, see "Dower," § 57.

Limitations applicable to action to set aside surrender, see "Limitation of Actions," § 19.

Misconduct of wife as barring right to dower and homestead, see "Dower," § 51.

Order appointing commissioners to set apart homestead and dower, see "Dower," § 82.

*Annotation.*

General direction in will to pay debts as charging homestead.—44 L. R. A. (N. S.) 1177, note.

Right of widow to convey, lease, or encumber homestead during minority of children.—10 L. R. A. (N. S.) 787, note.

Rights of widow under homestead and exemption laws.—4 L. R. A. (N. S.) 391, note.

Rights of surviving children under homestead and exemption laws.—4 L. R. A. (N. S.) 394, note.

Right of heirs to exemption of homestead from ancestor's debts contracted prior to its acquisition by him.—4 L. R. A. (N. S.) 544, note.

Partition of homestead where homestead right is in widow.—4 L. R. A. (N. S.) 790, note.

Rights of child in parent's homestead.—56 L. R. A. 34, note.

Descent to child of right in parent's homestead as dependent on existence of widow.—56 L. R. A. 47, note.

Effect of alienation or encumbrance of homestead by surviving spouse on rights of children.—56 L. R. A. 71, note.

Widow's homestead rights in partnership real estate.—27 L. R. A. 347, note.

### IV. ABANDONMENT, WAIVER, OR FORFEITURE.

§§ 154-181½. (See Analysis.)

*Cross-References.*

Application of general statute of limitations, see "Limitation of Actions," § 19.

By bankrupt, see "Bankruptcy," § 399.

Effect of election of widow to take under devise of homestead, see "Wills," § 800.

Estoppel to assert invalidity of administration sale, see "Executors and Administrators," § 377.

*Annotation.*

Is continuance of family a condition of the continuance of homestead, where its existence is a condition of the inception of the homestead.—16 L. R. A. (N. S.) 111, note.

Effect of abandonment on right to partition homestead.—4 L. R. A. (N. S.) 793, 797, note.

Effect of insanity and imprisonment as abandonment of homestead.—3 L. R. A. (N. S.) 515, note.

Abandonment of homestead by parent, effect on rights of children.—56 L. R. A. 80, note.

### V. PROTECTION AND ENFORCEMENT OF RIGHTS.

§§ 182-218. (See Analysis.)

*Cross-References.*

Amended pleading setting up homestead claimed by grantor in fraudulent conveyance, see "Fraudulent Conveyances," § 268.

Appellate jurisdiction dependent on whether case involves title to land, see "Courts," §§ 219, 231.

Collateral attack on sale by administrator, see "Executors and Administrators," §§ 349, 383.

Designation of grantor's homestead in judgment setting aside conveyance as in fraud of creditors, see "Fraudulent Conveyances," § 313.

Duty of commissioners appointed to appraise homestead, to set apart personal exemptions, see "Exemptions," § 128.

Limitation of actions for recovery of mesne profits, see "Limitation of Actions," § 32.

Proceedings on assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 358.

Restraining issuance of tax deed, see "Taxation," § 752.

Right of purchaser at administrator's sale to set off homestead to widow and children, see "Executors and Administrators," § 388.

Sale of property and payment of value of homestead to insolvent assignor, see "Assignments for Benefit of Creditors," § 244.

## HOMICIDE.\*

*Scope-Note.*

[INCLUDES killing a human being, aiding in, attempting, or soliciting such killing and assaults with intent to kill; nature and elements of murder, manslaughter, and of degrees thereof, and of attempts and assaults with intent to commit such offenses; nature and extent of criminal responsibility therefor, and grounds of defense, more particularly justification or excuse, and prosecution and punishment of such acts as public offenses.

[EXCLUDES killing one's self (see "*Suicide*") ; conspiracy to kill (see "*Conspiracy*") ; right to bail (see "*Bail*") ; and actions for damages for causing death (see "*Death*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. The Homicide.**

- § 1. Person subject of homicide.
- § 2. Nature of act or omission causing death.
- § 3. Nature of means or instrument used.
- § 4. Nature of injury to person killed.
- § 5. Cause of death.
- § 6. Time of death.

**II. Murder.**

- § 7. Nature and elements in general.
- § 8. Statutory provisions.
- § 9. Intent or design to effect death.
- § 10. Malice.
- § 11. — In general.
- § 12. — Express.
- § 13. — Implied.
- § 14. Deliberation and premeditation.
- § 15. Nature of act causing death.
- § 16. Nature of means or instrument used.
- § 17. Killing one with design to effect death of another.
- § 18. Homicide in commission of or intent to commit other offense.
- § 19. Homicide in duel.
- § 20. Homicide in resisting officer or other person in performance of duty.
- § 21. Degrees.
- § 22. — First degree.
- § 23. — Second degree.
- § 24. — Third and lesser degrees.
- § 25. Attempts.
- § 26. Solicitation.
- § 27. Insanity.
- § 28. Intoxication.
- § 29. Persons liable.
- § 30. Principals and accessories.

\*Annotation: Words and Phrases, same title.

**III. Manslaughter.**

- § 31. Nature and elements in general.
- § 32. Statutory provisions.
- § 33. Elements of voluntary manslaughter.
- § 34. Elements of involuntary manslaughter.
- § 35. Absence of malice.
- § 36. Absence of design to effect death.
- § 37. Absence of intent to do bodily harm.
- § 38. Sudden passion or heat of passion.
- § 39. — In general.
- § 40. — Time for cooling.
- § 41. Provocation.
- § 42. — Nature and adequacy in general.
- § 43. — Sufficiency as cause of passion.
- § 44. — Assault or other injury to the person.
- § 45. — Threatening or insulting language or conduct.
- § 46. — Defamation.
- § 47. — Adultery of husband or wife.
- § 48. — Personal injury to others or threats thereof.
- § 49. — Insult to or defamation of others.
- § 50. — Trespass or other injury to property.
- § 51. — Seeking or inciting provocation.
- § 52. Relation of act causing death to provocation.
- § 53. Homicide in resisting unlawful act.
- § 54. — Assault or other injury to the person in general.
- § 55. — Unauthorized arrest or imprisonment.
- § 56. — Injury to others.
- § 57. — Trespass or other injury to property.
- § 58. Nature of act causing death.
- § 59. Nature of means or instrument used.
- § 60. Killing one with intent to kill or injure another.
- § 61. Homicide in commission of or attempt to commit other offense.
- § 62. — In general.
- § 63. — Assault and mutual combat.
- § 64. — Affray or riot.
- § 65. — Abortion.
- § 66. — Offenses against property.
- § 67. — Resisting officer or other person in performance of duty.
- § 68. Homicide in commission of unlawful act not constituting crime.
- § 69. Homicide in undue exercise of authority or duty.
- § 70. — In general.
- § 71. — Correction of child or servant.
- § 72. — Making arrest or preventing escape of prisoner.
- § 73. — Suppression of affray or riot, and preservation of peace.
- § 74. Negligence in performance of lawful act.
- § 75. Neglect to perform act required by law.
- § 76. Degrees.
- § 77. — First degree.
- § 78. — Second degree.

**III. Manslaughter—Continued.**

- § 79. — Third and lesser degrees.
- § 80. Insanity.
- § 81. Intoxication.
- § 82. Persons liable.
- § 83. Principals and accessories.

**IV. Assault with Intent to Kill.**

- § 84. Nature and elements in general.
- § 85. Statutory provisions.
- § 86. Intent.
- § 87. Malice.
- § 88. Ability to execute intent.
- § 89. Nature of act in general.
- § 90. Nature of weapon or instrument used.
- § 91. Secret assault.
- § 92. Threats to take life.
- § 93. Defenses.
- § 94. — In general.
- § 95. — Provocation.
- § 96. — Self-defense.
- § 97. — Defense of another.
- § 98. — Defense of habitation.
- § 99. — Defense of property.
- § 100. Persons liable.

**V. Excusable or Justifiable Homicide.**

- § 101. Grounds of excuse or justification in general.
- § 102. Statutory provisions.
- § 103. Exercise of authority or duty.
- § 104. — Execution of legal process in general.
- § 105. — Making arrest or preventing escape of prisoner.
- § 106. — Suppression of affray or riot, and preservation of peace.
- § 107. Prevention of commission of offense in general.
- § 108. Self-defense.
- § 109. — In general.
- § 110. — Nature and purpose of attack.
- § 111. — Resistance of arrest.
- § 112. — Aggression or provocation of attack.
- § 113. — Withdrawal after aggression.
- § 114. — Voluntary participation in contest or mutual combat.
- § 115. — Nature and imminence of danger.
- § 116. — Apprehension of danger.
- § 117. — Necessity of act in general.
- § 118. — Duty to retreat.
- § 119. — Manner of repelling attack.
- § 120. — Pursuit of adversary.
- § 121. — Renewal of contest.
- § 122. Defense of another.
- § 123. Defense of habitation.

**V. Excusable or Justifiable Homicide—Continued.**

- § 124. Defense of property.
- § 125. Accident or misfortune.
- § 126. Compulsion or necessity.

**VI. Indictment and Information.**

- § 127. Requisites and sufficiency in general.
- § 128. Intent.
- § 129. Malice.
- § 130. Deliberation and premeditation.
- § 131. Description of person killed or assaulted.
- § 132. Place of offense.
- § 133. Time of offense.
- § 134. Act or omission causing death.
- § 135. Means or instrument, and manner of use thereof.
- § 136. Wound or other injury causing death.
- § 137. Death from injury, and place and time thereof.
- § 138. Commission of or attempt to commit other offense or unlawful act.
- § 139. Specification of grade or degree of homicide.
- § 140. Attempt, threats, or solicitation to kill.
- § 141. Assault with intent to kill.
- § 142. Issues, proof, and variance.

**VII. Evidence.****(A) PRESUMPTIONS AND BURDEN OF PROOF.**

- § 143. Corpus delicti.
- § 144. Elements of offense in general.
- § 145. Intent.
- § 146. Malice.
- § 147. Deliberation and premeditation.
- § 148. Personal relations.
- § 149. Cause of death.
- § 150. Matters of defense in general.
- § 151. Excuse or justification.
- § 152. Grade or degree of offense.

**(B) ADMISSIBILITY IN GENERAL.**

- § 153. Corpus delicti.
- § 154. Identity of deceased.
- § 155. Intent, malice, deliberation, and premeditation.
- § 156. — In general.
- § 157. — Previous quarrels and ill feeling.
- § 158. — Previous threats and expressions of ill will by accused.
- § 159. — Previous hostile acts or conduct of accused.
- § 160. — Preparations.
- § 161. — Nature and circumstances of act.
- § 162. Commission of or participation in act by accused in general.
- § 163. Character and habits of parties.
- § 164. Physical condition of parties.
- § 165. Personal relations of parties.
- § 166. Motive.

**VII. Evidence—Continued.****(B) ADMISSIBILITY IN GENERAL—Continued.**

- § 167. Threats, preparations, and previous attempts.
- § 168. Ability and opportunity.
- § 169. Circumstances preceding act.
- § 170. Identity and presence of accused.
- § 171. Nature of act and attendant circumstances in general.
- § 172. Commission of or attempt to commit other offense or unlawful act.
- § 173. Means or instrument used.
- § 174. Subsequent incriminating or exculpatory circumstances.
- § 175. Cause of death.
- § 176. Extent of injury from assault with intent to kill.
- § 177. Suicide.
- § 178. Incriminating others.
- § 179. Insanity.
- § 180. Intoxication.
- § 181. Passion and provocation.
- § 182. Unlawful character of act of deceased, and resistance by accused.
- § 183. Excuse or justification in general.
- § 184. Exercise of authority or duty.
- § 185. Prevention of commission of offense in general.
- § 186. Self-defense.
- § 187. — In general.
- § 188. — Character and habits of person killed or assaulted.
- § 189. — Previous quarrels and ill feeling.
- § 190. — Previous threats by person killed or assaulted.
- § 191. — Previous hostile acts or conduct of person killed or assaulted.
- § 192. — Aggression or provocation of attack by accused.
- § 193. — Possession and use of weapons by person killed or assaulted.
- § 194. — Imminence and apprehension of danger to accused.
- § 195. — Nature and circumstances of act.
- § 196. Defense of another.
- § 197. Defense of habitation.
- § 198. Defense of property.
- § 199. Grade or degree of offense.

**(C) DYING DECLARATIONS.**

- § 200. Grounds of admissibility in general.
- § 201. Condition of person making declaration.
- § 202. — Danger and imminence of death.
- § 203. — Sense of impending death.
- § 204. — Time intervening before death.
- § 205. Circumstances attendant on making of declaration.
- § 206. Making and form of declaration.
- § 207. — In general.
- § 208. — Declarations under oath.
- § 209. — Written declarations.
- § 210. Ratification of previous declaration.
- § 211. Prosecutions in which declarations are admissible.
- § 212. Persons as to whom declarations are admissible.



**VII. Evidence—Continued.****(C) DYING DECLARATIONS—Continued.**

- § 213. Competency as witness of person making declaration.
- § 214. Subject-matter and relevancy.
- § 215. Competency of declaration as evidence.
- § 216. Preliminary evidence.
- § 217. Method of proof.
- § 218. Determination of question of admissibility.
- § 219. Credibility and impeachment.
- § 220. Contradiction and corroboration.
- § 221. Effect.

**(D) PROCEEDINGS AT INQUEST.**

- § 222. Admissibility in general.
- § 223. Testimony and statements of accused.
- § 224. Testimony of witnesses.
- § 225. Verdict and inquisition.
- § 226. Method of proof.
- § 227. Effect.

**(E) WEIGHT AND SUFFICIENCY.**

- § 228. Corpus delicti.
- § 229. Identity of deceased.
- § 230. Intent.
- § 231. Malice.
- § 232. Deliberation and premeditation.
- § 233. Motive.
- § 234. Commission of or participation in act by accused.
- § 235. Commission of or attempt to commit other offense.
- § 236. Cause of death.
- § 237. Insanity.
- § 238. Intoxication.
- § 239. Passion and provocation.
- § 240. Unlawful character of act of deceased, and resistance by accused.
- § 241. Excuse or justification in general.
- § 242. Exercise of authority or duty.
- § 243. Prevention of commission of offense in general.
- § 244. Self-defense.
- § 245. Defense of another.
- § 246. Defense of habitation.
- § 247. Defense of property.
- § 248. Accident or misfortune.
- § 249. Principals and accessories.
- § 250. Degree of homicide in general.
- § 251. Degree of murder.
- § 252. — In general.
- § 253. — First degree.
- § 254. — Second and lesser degrees.
- § 255. Degree of manslaughter.
- § 256. Attempt, threats, or solicitation to kill.
- § 257. Assault with intent to kill.

**VIII. Trial.****(A) CONDUCT IN GENERAL.**

- § 258. Preliminary proceedings.
- § 259. Course of trial in general.
- § 260. View of place of homicide.
- § 261. Exhumation and examination of body of deceased.
- § 262. Presence and use of articles connected with offense.
- § 263. Reception of evidence.
- § 264. — In general
- § 265. — Use of depositions.
- § 266. — Compelling calling of eyewitnesses.
- § 267. — Use of dying declarations.

**(B) QUESTIONS FOR JURY.**

- § 268. Questions of law or of fact in general.
- § 269. Elements of offense.
- § 270. Insanity or intoxication.
- § 271. Passion and provocation.
- § 272. Unlawful character of act of deceased, and resistance by accused.
- § 273. Excuse or justification in general.
- § 274. Exercise of authority or duty.
- § 275. Prevention of commission of offense in general.
- § 276. Self-defense.
- § 277. Defense of another.
- § 278. Defense of habitation.
- § 279. Defense of property.
- § 280. Accident or misfortune.
- § 281. Principals and accessories.
- § 282. Grade or degree of offense.
- § 282½. Extent of punishment.

**(C) INSTRUCTIONS.**

- § 283. Province of court and jury in general.
- § 284. Corpus delicti.
- § 285. Elements of offense in general.
- § 286. Intent, malice, deliberation, and premeditation.
- § 287. Motive.
- § 288. Nature and circumstances of act.
- § 289. Commission of or attempt to commit other offense.
- § 290. Nature of means or instrument used.
- § 291. Cause of death.
- § 292. Elements of assault with intent to kill.
- § 293. Matters of defense in general.
- § 294. Insanity or intoxication.
- § 295. Passion and provocation.
- § 296. Resistance to unlawful acts.
- § 297. Excuse or justification in general.
- § 298. Exercise of authority or duty.
- § 299. Prevention of commission of offense in general.
- § 300. Self-defense.
- § 301. Defense of another.

**VIII. Trial—Continued.****(C) INSTRUCTIONS—Continued.**

- § 302. Defense of habitation.
- § 303. Defense of property.
- § 304. Accident or misfortune.
- § 305. Principals and accessories.
- § 306. Grade or degree of offense.
- § 307. — In general.
- § 308. — Murder.
- § 309. — Manslaughter.
- § 310. — Assault with intent to kill.
- § 311. Punishment.

**(D) VERDICT.**

- § 312. Form and requisites in general.
- § 313. Specification of grade or degree of offense.
- § 314. Assessment of punishment.
- § 315. Construction and operation.

**IX. New Trial.**

- § 316. Grounds in general.
- § 317. Errors and irregularities.
- § 318. Excessive sentence or punishment.
- § 319. Newly discovered evidence.
- § 320. Order granting or refusing.
- § 321. Proceedings at new trial.

**X. Appeal and Error.**

- § 322. Appellate jurisdiction.
- § 323. Decisions reviewable.
- § 324. Right of review.
- § 325. Presentation and reservation in lower court of grounds of review.
- § 326. Proceedings for transfer of cause and effect thereof.
- § 327. Record.
- § 329. Review in general.
- § 330. Presumptions in appellate court.
- § 331. Review of discretion of lower court.
- § 332. Review of questions of fact.
- § 333. Harmless error.
- § 334. — In general.
- § 335. — Proceedings before trial.
- § 336. — Conduct of trial in general.
- § 337. — Rulings as to indictment or pleas.
- § 338. — Admission of evidence.
- § 339. — Exclusion of evidence.
- § 340. — Instructions.
- § 341. — Failure or refusal to give instructions.
- § 342. — Verdict.
- § 343. — Sentence.
- § 345. Determination and disposition of cause in general.
- § 346. Affirmance.
- § 347. Reduction or modification of sentence.

**X. Appeal and Error—Continued.**

§ 348. Reversal.

§ 349. Mandate and proceedings in lower court.

**XI. Sentence and Punishment.**

§ 350. Power and duty of court in general.

§ 351. Constitutional and statutory provisions.

§ 352. Form and requisites of sentence.

§ 353. Entry and record of judgment.

§ 354. Nature and extent of punishment.

*Cross-References.*

See "Suicide."

Administering poison, see "Poisons," §§ 8, 9.

Arraignment and pleas, see "Criminal Law," §§ 261-303.

As extraditable offense, see "Extradition," § 5.

Breaking and entering buildings with homicidal intent, see "Burglary," § 4.

By Indians, see "Indians," § 38.

By slaves, see "Slaves," § 18.

Cause of death of person insured, see "Insurance," § 448.

Causing death of intestate as affecting right of inheritance, see "Descent and Distribution," § 63.

Change of venue, see "Criminal Law," §§ 117, 121, 125, 126, 132, 134, 136, 137, 139, 141, 142, 145.

Civil liability for causing death, see "Death," §§ 7-109.

Conspiracy to kill, see "Conspiracy," § 28.

Coroner's inquest, see "Coroners," §§ 10-22.

Creation and description of offense by mob violence, see "Criminal Law," § 13.

Extortion by threats to kill, see "Threats," §§ 1, 5.

Former jeopardy, see "Criminal Law," §§ 161-204.

Judicial notice, see "Criminal Law," § 304.

Jurisdiction, see "Criminal Law," §§ 93, 95, 97, 100, 102, 105.

Liability of county for expense of defending person charged with murder, see "Counties," § 139.

Liability of sheriff for homicide of one prisoner by another, see "Prisons," § 10.

Libelous publications, see "Libel and Slander," § 7.

Limitation of prosecutions, see "Criminal Law," § 147.

Pardon, see "Pardon," § 9.

Preliminary proceedings, see "Criminal Law," §§ 205-260.

Prosecution for abortion where death results, see "Abortion."

Right of burial of body of murderer, see "Cemeteries," § 16.

Right of person accused and convicted of murder to compel surrender of Bertillon measurements and photographs on subsequent acquittal, see "Records," § 11.

Right to bail, see "Bail," § 43.

Spoliation of evidence, see "Criminal Law," § 318.

Transfer of prosecution, see "Criminal Law," § 101.

Venue, see "Criminal Law," §§ 107, 108, 111, 112.

**I. THE HOMICIDE.****§ 1. Person subject of homicide.***Cross-Reference.*

Description of person in indictment in general, see post, § 131.

**§ 2. Nature of act or omission causing death.***Cross-References.*

Allegations in indictment, see post, § 134.

As affecting liability for manslaughter, see post, § 58.

Unlawful act not crime, see post, § 68.

**§ 3. Nature of means or instrument used.***Cross-References.*

Admissibility of evidence, see post, § 173.

Allegations in indictment, see post, § 135.

As affecting liability for manslaughter, see post, § 59.

Instructions, see post, § 290.

Presumption as to degree of murder, arising from nature of weapon used, see post, § 152.

Raising presumption of intent, see post, § 145.

Raising presumption of malice, see post, § 146.

Variance, see post, § 142.

**§ 4. Nature of injury to person killed.***Cross-Reference.*

Allegations in indictment, see post, § 136.

**§ 5. Cause of death.***Cross-References.*

Admissibility of evidence, see post, § 175.

Instructions, see post, § 291.

Manslaughter in commission of abortion, see post, § 65.

Presumptions and burden of proof, see post, § 149.

Sufficiency of evidence, see post, § 236.

## § 6. Time of death.

### II. MURDER.

## § 7. Nature and elements in general.

## § 8. Statutory provisions.

### Cross-Reference.

Subject and title of acts, see "Statutes," § 118.

(a) Act 1809, c. 138, does not create a new offense in speaking of murder in the second degree, but merely establishes a rule to guide the courts in awarding the punishment.—*Weighorst v. State*, 7 Md. 442. (See Code [vol. 3], art. 27, §§ 362-369.) [Cited and annotated in 21 L. R. A. (N. S.) 4, 21, on conviction of lower or different degree in prosecution for homicide.]

## § 9. Intent or design to effect death.

### Cross-References.

Admissibility of evidence, see post, §§ 156-161.

Allegations in indictment, see post, § 128.

Instructions, see post, § 286.

Presumptions and burden of proof, see post, § 145.

Sufficiency of evidence, see post, § 230.

### Annotation.

Intention to wound only, as affecting degree of homicide in absence of excuse or justification.—35 L. R. A. (N. S.) 621, note.

Intent to kill as affecting degree of homicide in heat of passion.—5 L. R. A. (N. S.) 819, note.

## §§ 10-13. Malice.

### Cross-References.

Admissibility of evidence, see post, §§ 156-161.

Allegations in indictment, see post, § 129.

Instructions, see post, § 286.

Presumptions and burden of proof, see post, § 146.

Sufficiency of evidence, see post, § 231.

### Annotation.

"Malice aforethought" in the definition of murder; what the term now means, and how the courts should deal with it in charging the jury.—38 L. R. A. (N. S.) 1054, note.

## § 14. Deliberation and premeditation.

### Cross-References.

Admissibility of evidence, see post, §§ 156-161.

Allegations in indictment, see post, § 130.

Element of assault with intent to kill, see post, § 84.

Instructions, see post, § 286.

Presumptions and burden of proof, see post, § 147.

Raising presumption of malice, see post, § 146.

Sufficiency of evidence, see post, § 232.

### Annotation.

Elements of deliberation and premeditation as affected by the brevity of the period elapsing between the resolution to kill and the homicide.—7 L. R. A. (N. S.) 1056, note.

## § 15. Nature of act causing death.

### Cross-References.

Admissibility of evidence, see post, § 171.

Affecting liability for manslaughter, see post, § 58.

Allegations in indictment, see post, § 134.

Showing degree, see post, § 253.

Unlawful act not crime, see post, § 68.

## § 16. Nature of means or instrument used.

### Cross-References.

Admissibility of evidence, see post, § 173.

Affecting liability for manslaughter, see post, § 59.

Allegations in indictment, see post, § 135.

Presumptions as to degree of murder arising from nature of weapon used, see post, § 152.

Raising presumptive intent, see post, § 145.

Raising presumptions of malice, see post, § 146.

Sufficiency of evidence to show murder in first degree, see post, § 253.

Variance, see post, § 142.

## § 17. Killing one with design to effect death of another.

### Cross-References.

Assaulting one with intent to kill or injure another, see post, § 89.

Variance, see post, § 142.

### Annotation.

Homicide by unlawful act aimed at another than the one killed.—63 L. R. A. 660, note.

## § 18. Homicide in commission of or intent to commit other offense.

### Cross-References.

Admissibility of evidence, see post, § 172.

Allegations in indictment, see post, § 138.

Instructions, see post, § 289.

Manslaughter, see post, §§ 62-67.

Sufficiency of evidence, see post, § 235.

### Annotation.

Homicide in the commission of an unlawful act.—63 L. R. A. 354, note.

General and common-law rules as to homicide.—63 L. R. A. 902, note.

## § 19. Homicide in duel.

**§ 20. Homicide in resisting officer or other person in performance of duty.**

*Cross-References.*

Admissibility of evidence, see post, § 172.  
Excusable or justifiable homicide, see post, § 111.  
Homicide in resisting unauthorized arrest or imprisonment, see post, § 55.  
Manslaughter, see post, § 67.

*Annotation.*

Homicide in resisting arrest, or of officers of justice.—66 L. R. A. 353; 33 L. R. A. (N. S.) 133, notes.

**§§ 21-24. Degrees.**

*Cross-References.*

Admissibility of evidence, see post, § 199.  
Circumstances of atrocity, cruelty, malignity, and depravity as showing degree, see post, § 253.  
Degrees of manslaughter, see post, §§ 77-79.  
Instructions, see post, § 308.  
Presumptions and burden of proof, see post, § 152.  
Question for jury, see post, § 282.  
Specification in indictment, see post, § 139.  
Specification in verdict, see post, § 313.  
Sufficiency of evidence, see post, §§ 252-254.  
Variance, see post, § 142.

**§ 25. Attempts.**

*Cross-References.*

Indictment and information, see post, § 140.  
Sufficiency of evidence, see post, § 256.

**§ 26. Solicitation.**

*Cross-Reference.*

Sufficiency of evidence, see post, § 256.

**§ 27. Insanity.**

*Cross-References.*

Admissibility of evidence, see post, § 179.  
Defense to assault with intent to kill, see post, § 94.  
Instructions, see post, § 294.  
Presumptions and burden of proof, see post, § 151.  
Question for jury, see post, § 270.  
Sufficiency of evidence, see post, § 237.

**§ 28. Intoxication.**

*Cross-References.*

Admissibility of evidence, see post, § 180.  
Burden of proof, see post, § 151.  
Defense to assault with intent to kill, see post, §§ 86, 94.  
Defense to manslaughter, see post, § 81.  
Instructions, see post, § 294.  
Question for jury, see post, § 270.  
Sufficiency of evidence, see post, § 238.

**§ 29. Persons liable.**

*Cross-References.*

For assault with intent to kill, see post, § 100.  
For manslaughter, see post, § 82.

*Annotation.*

Homicide resulting from injuries by different persons acting independently.—67 L. R. A. 426; 43 L. R. A. (N. S.) 419, notes.

**§ 30. Principals and accessories.**

*Cross-References.*

In manslaughter, see post, § 83.  
Instructions, see post, § 305.  
Question for jury, see post, § 281.  
Sufficiency of evidence, see post, § 249.  
Variance, see post, § 142.  
Prosecution and punishment, see "Criminal Law," §§ 78, 80, 81.  
Venue of prosecution, see "Criminal Law," § 110.

*Annotation.*

Responsibility of one assisting in robbery during which his companion commits murder.—45 L. R. A. (N. S.) 55, note.

**III. MANSLAUGHTER.**

**§§ 31-34. (See Analysis.)**

**§ 35. Absence of malice.**

*Cross-References.*

Admissibility of evidence, see post, §§ 156-161.  
Allegations of malice in general, see post, § 129.  
Instructions, see post, § 286.  
Presumptions and burden of proof, see post, § 146.  
Sufficiency of proof of malice, see post, § 231.

**§ 36. Absence of design to effect death.**

*Cross-References.*

Admissibility of evidence as to intent, see post, §§ 156-161.  
Allegations in indictment, see post, § 128.  
Instructions, see post, § 286.  
Negligence in performance of lawful act, see post, § 74.  
Presumption and burden of proof, see post, § 145.  
Sufficiency of proof of intent, see post, § 230.

**§ 37. Absence of intent to do bodily harm.**

*Annotation.*

Homicide by misadventure.—3 L. R. A. (N. S.) 1153, note.

**§§ 38-40. Sudden passion or heat of passion.**

*Cross-References.*

Admissibility of evidence, see post, § 181.  
Excuse or justification, see post, § 101.  
Instructions, see post, § 295.

Question for jury, see post, § 271.  
Sufficiency of evidence, see post, § 239.

*Annotation.*

Heat of passion which will mitigate or reduce degree of a homicide.—5 L. R. A. (N. S.) 809, note.

**§§ 41-51. Provocation.**

*Cross-References.*

See post, § 108.  
Admissibility of evidence, see post, § 181.  
Defense in prosecution for assault with intent to kill, see post, § 95.  
Excuse, see post, § 101.  
Instructions, see post, § 295.  
Killing of husband in self-defense by wife's paramour, see post, § 112.  
Question for jury, see post, § 271.  
Sufficiency of evidence, see post, § 239.  
Want of provocation raising presumption of malice, see post, § 146.

*Annotation.*

Insulting words or conduct as a provocation to homicide.—4 L. R. A. (N. S.) 154, note.

**§ 52. Relation of act causing death to provocation.**

*Cross-References.*

Affecting self-defense, see post, § 112.  
Killing in defense of attack made without weapons, see post, § 119.  
Means used as element of murder, see ante, § 16.  
Nature of means used as affecting responsibility generally, see ante, § 3, and post, § 59.  
Use of deadly or dangerous weapon as raising presumption of intent, see post, § 145.  
Use of deadly or dangerous weapon as raising presumption of malice, see post, § 146.

**§§ 53-57. Homicide in resisting unlawful act.**

*Cross-References.*

Admissibility of evidence, see post, § 182.  
Justifiable homicide in resisting arrest, see post, § 111.  
Sufficiency of evidence, see post, § 240.  
Killing in resistance of unlawful arrest as self-defense, see post, § 111.

*Annotation.*

Homicide in resistance to unlawful arrest.—66 L. R. A. 375; 33 L. R. A. (N. S.) 147, notes.

**§ 58. Nature of act causing death.**

*Cross-References.*

Admissibility of evidence, see post, § 171.  
Affecting responsibility generally, see ante, § 15.  
Allegations in indictment, see post, § 134.  
Element of murder, see ante, § 2.

**§ 59. Nature of means or instrument used.**

*Cross-References.*

Admissibility of evidence, see post, § 173.  
Allegations in indictment, see post, § 135.  
Element of murder, see ante, § 16.  
Presumption as to malice, see post, § 146.  
Variance, see post, § 142.

**§ 60. Killing one with intent to kill or injure another.**

*Cross-References.*

Responsibility for murder, see ante, § 17.  
Variance, see post, § 142.

*Annotation.*

Homicide by unlawful act aimed at another than the one killed.—63 L. R. A. 660, note.

**§§ 61-67. Homicide in commission of or attempt to commit other offense.**

*Cross-References.*

Admissibility of evidence, see post, § 172.  
Allegations in indictment, see post, § 138.  
Instructions, see post, § 289.  
Killing of or by officer in self-defense, see post, § 111.  
Sufficiency of evidence, see post, § 235.  
Weight and sufficiency of evidence, see post, § 235.

*Abortion.*

Allegations as to intent in indictment, see post, § 128.  
Allegations in indictment or information in general, see post, §§ 131, 138.  
Element of murder, see ante, § 18.  
Weight and sufficiency of evidence, see post, § 235.  
Grounds for new trial, see "Criminal Law," § 939.

*Annotation.*

Homicide in commission of misdemeanor with dangerous weapons.—45 L. R. A. (N. S.) 219, note.  
Homicide in mutual combat voluntarily and willingly entered into.—45 L. R. A. (N. S.) 646, note.  
Homicide in resisting arrest, or of officers of justice.—66 L. R. A. 353; 33 L. R. A. (N. S.) 133, notes.  
Homicide in the commission of an unlawful act.—63 L. R. A. 354, note.  
Homicide in the commission of, or attempt to commit, an abortion.—63 L. R. A. 902, note.

(a) Where there was no statute changing the common-law character of the crime of death by abortion, a demurrer to an indictment on the ground that it charged death as the result of an abortion, but charged the defendant with the crime of manslaughter

instead of murder, was properly overruled; since causing death by attempting abortion is only manslaughter, at common law, unless the attempt is made in a way that endangers the mother's life.—*Worthington v. State*, 92 Md. 222, 48 Atl. 355, 56 L. R. A. 358, 84 Am. St. Rep. 506. (See Code [vol. 3], art. 27, § 3). [*Cited and annotated* in 63 L. R. A. 904, 905, 918, on homicide in attempting or committing abortion; in 16 L. R. A. (N. S.) 660, on jury's right to determine existence of facts essential to admissibility of dying declarations; in 21 L. R. A. (N. S.) 840, on opinions and conclusions as subjects of dying declarations; in 37 L. R. A. (N. S.) 252, 253, 254, on admissibility of contradictory statements to impeach dying declarations; in 40 L. R. A. (N. S.) 1195, on admissibility of dying declaration of person for whose death accused not on trial.]

### § 68. Homicide in commission of unlawful act not constituting crime.

#### Annotation.

Homicide in carrying out unlawful conspiracy.—68 L. R. A. 193, note.

Homicide in the commission of unlawful acts not felonies.—63 L. R. A. 379, note.

### §§ 69-73. Homicide in undue exercise of authority or duty.

#### Annotation.

Homicide by official action or by officers of justice.—67 L. R. A. 293, note.

Homicide by excessive or improper chastisement.—60 L. R. A. 801, note.

### § 74. Negligence in performance of lawful act.

#### Annotation.

Negligent homicide.—61 L. R. A. 277; 63 L. R. A. 392, notes.

### § 75. Neglect to perform act required by law.

#### Cross-Reference.

See ante, § 2.

#### Annotation.

Effect of failure to provide medical attendance to render one guilty of manslaughter.—45 L. R. A. (N. S.) 559, note.

### §§ 76-79. Degrees.

#### Cross-References.

Admissibility of evidence, see post, § 199.

Degrees of murder, see ante, §§ 21-24.

Instructions, see post, §§ 307, 309.

Question for jury, see post, § 282.

Specification in indictment, see post, § 139.

Specification in verdict, see post, § 313.

Sufficiency of evidence, see post, § 255.

Variance, see post, § 142.

### § 80. Insanity.

#### Cross-References.

Admissibility of evidence, see post, § 179.

Defense to murder, see ante, § 27.

Instructions, see post, § 294.

Question for jury, see post, § 270.

Sufficiency of evidence, see post, § 237.

### § 81. Intoxication.

#### Cross-References.

Admissibility of evidence, see post, § 180.

Defense to murder, see ante, § 28.

Instructions, see post, § 294.

Question for jury, see post, § 270.

Sufficiency of evidence, see post, § 238.

### § 82. Persons liable.

#### Annotation.

May a corporation be convicted of homicide.—21 L. R. A. (N. S.) 998; 45 L. R. A. (N. S.) 344, notes.

Homicide resulting from injuries by different persons acting independently.—67 L. R. A. 426, note.

Criminal responsibility of corporation for homicide.—2 B. R. C. 247, note.

### § 83. Principals and accessories.

#### Cross-References.

Instructions, see post, § 305.

Question for jury, see post, § 281.

Sufficiency of evidence, see post, § 249.

To murder, see ante, § 30.

## IV. ASSAULT WITH INTENT TO KILL.

#### Cross-References.

Attempts to murder, see ante, § 25.

Indictment and information, see post, § 141.

Instructions, see post, § 292.

Sufficiency of evidence, see post, § 257.

Application and affidavits for continuance in prosecution for, see "Criminal Law," §§ 608, 611.

Assault with intent to do great bodily harm, see "Assault and Battery," § 55; "Criminal Law," §§ 594, 595, 597, 598, 600.

Operation and effect of grant or refusal of continuance, see "Criminal Law," § 616.

Summary jurisdiction, see "Criminal Law," § 251.

### § 84. Nature and elements in general.

### § 85. Statutory provisions.

#### Cross-References.

Sufficiency of indictment or information under statutes, see post, § 141.

Creation of offense, see "Criminal Law," § 13.

### § 86. Intent.

#### Cross-References.

Admissibility of evidence, see post, §§ 156-161.



Allegations as to intent in indictment, see post, § 141.

Sufficiency of evidence, see post, § 257.

### § 87. Malice.

#### *Cross-References.*

Admissibility of evidence, see post, §§ 156-161.

Allegations as to malice in indictment, see post, § 141.

### § 88. Ability to execute intent.

#### *Cross-References.*

Allegations in indictment, see post, § 141.

Sufficiency of evidence, see post, § 257.

### § 89. Nature of act in general.

#### *Cross-Reference.*

Admissibility of evidence, see post, § 171.

#### *Annotation.*

Assault with intent to murder or kill by unlawful act aimed at another than the one injured.—37 L. R. A. (N. S.) 172, note.

### § 90. Nature of weapon or instrument used.

#### *Cross-References.*

Admissibility of evidence, see post, § 173.

Affecting responsibility for homicide generally, see ante, § 3.

Description in indictment, see post, § 141.

Raising presumption of intent, see post, § 145.

Variance, see post, § 142.

### § 91. Secret assault.

### § 92. Threats to take life.

#### *Cross-References.*

Sufficiency of evidence, see post, § 257.

Threats as provocation for killing, see ante, § 45.

### § 93. Defenses.

### § 94.— In general.

#### *Annotation.*

Drunkenness as defense to homicide.—13 L. R. A. (N. S.) 1024; 25 L. R. A. (N. S.) 376, notes.

### § 95.— Provocation.

#### *Cross-References.*

Admissibility of evidence, see post, § 181.

Element of manslaughter, see ante, §§ 42-51.

Instructions, see post, § 295.

Sufficiency of evidence, see post, § 239.

#### *Annotation.*

Unnecessary force in making arrest as provocation for homicide.—66 L. R. A. 370, note.

Provocation for homicide by intoxicated person.—36 L. R. A. 476, note.

### § 96.— Self-defense.

#### *Cross-References.*

Admissibility of evidence, see post, §§ 187-195.

Burden of proof and presumption, see post, § 151.

Instructions, see post, § 300.

Question for jury, see post, § 276.

Sufficiency of evidence, see post, § 244.

#### *Annotation.*

Criminal responsibility of aggressor for accidental killing of third person by shot fired in self-defense at aggressor.—2 L. R. A. (N. S.) 719, note.

Self-defense set up by accused who began the conflict.—45 L. R. A. 687, note.

### § 97.— Defense of another.

#### *Cross-References.*

Admissibility of evidence, see post, § 196.

Insult or defamation of others as provocation, see ante, § 49.

Threats and injuries to others as provocation, see ante, § 48.

#### *Annotation.*

Is one assisting relative in peril bound by the latter's act in bringing on the difficulty.—15 L. R. A. (N. S.) 1013; 39 L. R. A. (N. S.) 671, notes.

### § 98.— Defense of habitation.

#### *Cross-Reference.*

Instructions, see post, § 302.

#### *Annotation.*

Homicide to prevent entrance of dwelling.—45 L. R. A. (N. S.) 71, note.

### § 99.— Defense of property.

#### *Cross-References.*

Admissibility of evidence, see post, § 198.

Killing in resisting trespass, see ante, § 57.

Trespass as provocation, see ante, § 50.

### § 100. Persons liable.

#### *Cross-References.*

For murder, see ante, §§ 29, 30.

Variance, see post, § 142.

## V. EXCUSABLE OR JUSTIFIABLE HOMICIDE.

#### *Cross-References.*

Admissibility of evidence, see post, §§ 183-198.

Presumptions and burden of proof, see post, § 151.

Sufficiency of evidence, see post, §§ 241-248.

Sufficiency of evidence to remove reasonable doubt as to justification for homicide, see "Criminal Law," § 561.

### § 101. Grounds of excuse or justification in general.

#### *Cross-References.*

Admissibility of evidence as to intoxication, see post, § 180.  
 Instructions as to intoxication, see post, § 294.  
 Intoxication as defense to murder, see ante, § 28.  
 Sufficiency of evidence as to intoxication, see post, § 238.  
 Sufficiency of evidence in general, see post, § 241.  
 Coercion by father of infant defendant, see "Infants," § 67.

### § 102. Statutory provisions.

### §§ 103-106. Exercise of authority or duty.

#### *Cross-References.*

Admissibility of evidence, see post, § 184.  
 Sufficiency of evidence, see post, § 242.

#### *Annotation.*

Homicide by authority of law or under official direction.—67 L. R. A. 301, note.  
 Homicide in preventing escape or rescue.—67 L. R. A. 302, note.

### § 107. Prevention of commission of offense in general.

#### *Cross-References.*

Admissibility of evidence, see post, § 185.  
 Sufficiency of evidence, see post, § 243.

#### *Annotation.*

Homicide to prevent criminal or unlawful acts.—67 L. R. A. 529, note.

### § 108. Self-defense.

#### *Cross-References.*

Admissibility of evidence, see post, §§ 187-195.  
 Instructions, see post, § 300.  
 Presumptions and burden of proof, see post, § 151.  
 Questions for jury, see post, § 276.  
 Sufficiency of evidence, see post, § 244.  
 Defense against civil liability for death, see "Death," § 21.

### § 109.— In general.

#### *Annotation.*

Applicability of rule of reasonable doubt to self-defense in homicide.—19 L. R. A. (N. S.) 483; 31 L. R. A. (N. S.) 1166, notes.

### § 110.— Nature and purpose of attack.

### § 111.— Resistance of arrest.

#### *Annotation.*

Self-defense in resisting officer.—5 L. R. A. (N. S.) 1016, note.  
 Killing in self defense, officer using unnecessary force in making arrest.—66 L. R. A. 367, note.

### § 112.— Aggression or provocation of attack.

#### *Cross-References.*

Admissibility of evidence, see post, § 192.  
 Aggression by person provoked, see ante, § 51.  
 Instructions excluding question, see post, § 300.  
 Presumptions and burden of proof, see post, § 151.  
 Provocation as element of manslaughter, see ante, §§ 42-51.

#### *Annotation.*

Right of self-defense against attack due to defendant's illicit relations with wife or other relative of assailant.—46 L. R. A. (N. S.) 13, note.  
 Justifiable killing as defense in action for death intentionally inflicted.—23 L. R. A. (N. S.) 996, note.  
 Self-defense set up by accused who began the conflict.—45 L. R. A. 687, note.

### § 113.— Withdrawal after aggression.

### § 114.— Voluntary participation in contest or mutual combat.

#### *Annotation.*

Right to set up self-defense in case of homicide in mutual combat.—45 L. R. A. (N. S.) 646, note.

### § 115.— Nature and imminence of danger.

#### *Cross-Reference.*

Admissibility of evidence, see post, § 194.

### § 116.— Apprehension of danger.

#### *Cross-References.*

Admissibility of evidence, see post, § 194.  
 Character and habits of deceased as ground for apprehension, see post, § 188.  
 Instructions excluding question, see post, § 300.

### § 117.— Necessity of act in general.

#### *Cross-References.*

Instructions excluding or ignoring question, see post, § 300.  
 Presumptions and burden of proof, see post, § 151.

#### *Annotation.*

Standpoint of determination as to danger and necessity to kill in self-defense.—3 L. R. A. (N. S.) 535, note.

### § 118.— Duty to retreat.

#### *Cross-References.*

Instructions excluding question, see post, § 300.  
 Presumptions and burden of proof, see post, § 151.

#### *Annotation.*

"Retreat to the wall" in homicide.—2 L. R. A. (N. S.) 49, note.

**§ 119.—Manner of repelling attack.***Cross-References.*

Means or instrument used as element of murder, see ante, § 16.  
Nature of act causing death as affecting responsibility in general, see ante, § 2.

**§ 120.—Pursuit of adversary.****§ 121.—Renewal of contest.****§ 122. Defense of another.***Cross-References.*

Admissibility of evidence, see post, § 196.  
Injuries to others or threats thereof as provocation, see ante, § 48.  
Insult to or defamation of others, see ante, § 49.  
Sufficiency of evidence, see post, § 245.

*Annotation.*

Homicide or assault to prevent one from taking a child.—L. R. A. 1915A, 73, note.  
Homicide in defense of family and relations.—45 L. R. A. (N. S.) 145, note.  
Is one assisting relative in peril bound by the latter's act in bringing on the difficulty.—15 L. R. A. (N. S.) 1013; 39 L. R. A. (N. S.) 671, notes.

**§ 123. Defense of habitation.***Cross-References.*

Instructions, see post, § 302.  
Killing in resisting trespass, see ante, § 57.  
Trespass as provocation, see ante, § 50.

*Annotation.*

Homicide to prevent entrance of dwelling.—45 L. R. A. (N. S.) 71, note.

**§ 124. Defense of property.***Cross-References.*

Admissibility of evidence, see post, § 198.  
Killing in resisting trespass, see ante, § 57.  
Trespass as provocation, see ante, § 50.

**§ 125. Accident or misfortune.***Cross-References.*

Assaulting one with intent to kill or injure another, see ante, § 89.  
Evidence supporting defendant's claim, see post, § 183.  
Killing one with intent to kill or injure another, see ante, §§ 17, 60.  
Negligent killing, see ante, § 74.  
Sufficiency of evidence, see post, § 248.

**§ 126. Compulsion or necessity.****VI. INDICTMENT AND INFORMATION.***Cross-References.*

Harmless error in rulings as to indictments and information, see post, § 337.  
Accessories after the fact, see "Indictment and Information," § 85.

Accusation against codefendants, see "Indictment and Information," § 82.

Aider by verdict, see "Indictment and Information," §§ 202, 203.

Amendment, see "Indictment and Information," §§ 160, 161.

Averments as to time of offense, see "Indictment and Information," § 87.

Bill of particulars, see "Indictment and Information," § 121.

Certainty and particularity, see "Indictment and Information," § 71.

Conclusion, see "Indictment and Information," §§ 32, 50.

Constitutional requirements, see "Indictment and Information," § 56.

Conviction of offense included in charge, see "Indictment and Information," §§ 186, 189-191.

Disjunctive or alternative averments, see "Indictment and Information," § 72.

Duplicity, see "Indictment and Information," § 125.

Election between counts, see "Indictment and Information," § 132.

Felonious nature of act, see "Indictment and Information," § 91.

Finding of grand jury, see "Indictment and Information," § 10.

Formal requisites, see "Indictment and Information," §§ 17-34.

For murder by convict, see "Convicts," § 5.

Hearing on motion to quash, see "Indictment and Information," § 140.

Indictment for murder after indictment for manslaughter, see "Indictment and Information," § 15.

Indorsement of names of witnesses, see "Criminal Law," § 628.

Joinder of counts, see "Indictment and Information," §§ 128, 130.

Joinder of parties, see "Indictment and Information," § 124.

Language and form of allegations, see "Indictment and Information," § 70.

Language of statute, see "Indictment and Information," § 110.

Leave of court to file information, see "Indictment and Information," § 40.

Mistakes in grammar, writing, or spelling, see "Indictment and Information," § 79.

Necessity of new indictment for manslaughter after setting aside conviction of manslaughter under indictment for murder, see "Indictment and Information," § 15.

Nolle prosequi, see "Criminal Law," § 302.

Omission of essential words, see "Indictment and Information," § 75.

Pleading conclusions, see "Indictment and Information," § 63.

Preliminary affidavit, see "Indictment and Information," § 41.

Principals in second degree, see "Indictment and Information," § 83.

Proper form of accusation, see "Indictment and Information," § 4.

Repugnancy, see "Indictment and Information," § 73.

Resubmission to grand jury, see "Indictment and Information," § 16.

Return and record, see "Indictment and Information," § 11.

Separate counts, see "Indictment and Information," § 100.

Service of copy, see "Criminal Law," § 627.

Sufficiency of verification of information, see "Indictment and Information," § 52.

Surplusage, see "Indictment and Information," § 119.

Validity of information as statement of offense at common law, see "Indictment and Information," § 112.

Waiver of objections, see "Indictment and Information," § 199.

### § 127. Requisites and sufficiency in general.

#### *Cross-Reference.*

Defects in, ground for new trial, see "Criminal Law," § 915.

### § 128. Intent.

#### *Cross-References.*

Absence of intent as element of manslaughter, see ante, § 36.

Element of murder, see ante, § 9.

Instructions, see post, § 286.

Sufficiency of proof, see post, § 230.

### § 129. Malice.

#### *Cross-References.*

Absence of, as element of manslaughter, see ante, § 35.

Element of murder, see ante, §§ 11-13.

Instructions, see post, § 286.

Sufficiency of proof, see post, § 231.

### § 130. Deliberation and premeditation.

#### *Cross-References.*

As element of first-degree murder, see ante, § 22.

As element of murder in general, see ante, § 14.

As element of second degree murder, see ante, § 23.

Instructions, see post, § 286.

Sufficiency of proof, see post, § 232.

### § 131. Description of person killed or assaulted.

#### *Cross-References.*

Erasures and interlineations, see "Indictment and Information," § 80.

In different counts, see "Indictment and Information," § 128.

Names of persons killed, *idem sonans*, see "Names," § 16.

### § 132. Place of offense.

#### *Annotation.*

Charge of time and place in indictment for homicide.—3 L. R. A. (N. S.) 1019, note.

### § 133. Time of offense.

### § 134. Act or omission causing death.

#### *Cross-References.*

Nature of act as affecting liability, for manslaughter, see ante, § 58.

Nature of act as affecting responsibility in general, see ante, § 2.

Nature of act as element of murder, see ante, § 15.

Duplicity, see "Indictment and Information," § 125.

### § 135. Means or instrument, and manner of use thereof.

#### *Cross-References.*

Admissibility of evidence, see post, § 173.

As affected by provocation, see ante, § 52.

As affecting liability for manslaughter, see ante, § 59.

As affecting responsibility for homicide generally, see ante, § 3.

As element of murder, see ante, § 16.

Aider by verdict, see "Indictment and Information," § 202.

Allegations as to instrument unknown, see "Indictment and Information," § 69.

Duplicity, see "Indictment and Information," § 125.

Joinder of counts, see "Indictment and Information," § 128.

### § 136. Wound or other injury causing death.

#### *Cross-References.*

Admissibility of evidence as to cause of death, see post, § 175.

Cause of death as affecting responsibility, see ante, § 5.

Sufficiency of proof as to cause of death, see post, § 236.

### § 137. Death from injury, and place and time thereof.

### § 138. Commission of or attempt to commit other offense or unlawful act.

#### *Cross-References.*

Admissibility of evidence of other offense, see post, § 172.

Commission of other crime as element of murder, see ante, § 18.

Instruction, see post, § 289.

Liability for manslaughter, see ante, §§ 62-67.

Sufficiency of proof of other offense, see post, § 235.

#### *Annotation.*

The indictment on trial for homicide in the commission of a felony.—63 L. R. A. 393, note.

### § 139. Specification of grade or degree of homicide.

#### *Cross-References.*

Admissibility of evidence, see post, § 199.

Degree as question for jury, see post, § 282.

Degree of manslaughter, see ante, §§ 77-79.

Degree of murder, see ante, §§ 21-24.

Instructions, see post, §§ 307-310.

Specification in verdict, see post, § 313.

Sufficiency of evidence, see post, §§ 250, 252-255.

(a) In an indictment for murder, it is not necessary to aver the circumstances which determine the degree, as defined by act 1809, c. 138, codified in Code 1860, art. 30.—*Davis v. State*, 39 Md. 355. (See Code 1911 [vol. 8], art. 27, §§ 362-369.) [Cited and annotated in 13 L. R. A. (N. S.) 815, on effect of failure to give accused opportunity to plead; in 21 L. R. A. (N. S.) 2, on conviction of lower or different degree in prosecution for homicide.]

#### § 140. Attempt, threats, or solicitation to kill.

##### Cross-References.

Elements of attempt to murder, see ante, § 25.

Elements of solicitation to murder, see ante, § 26.

Sufficiency of proof, see post, § 256.

Threats as substantive offense, see ante, § 92.

(a) An indictment charging that defendant attempted to commit an offense, to wit, to poison A., and in such attempt did an overt act towards the commission of the offense, to wit, delivered, knowingly and willfully, to A., a pill containing a large quantity of deadly poison, and solicited A. to swallow it, with intent to murder A., sufficiently alleges an attempt to murder by poison.—*Bittle v. State*, 78 Md. 526, 28 Atl. 405.

#### § 141. Assault with intent to kill.

##### Cross-References.

Elements of offense, see ante, §§ 84-100.

Instructions, see post, § 292.

Instructions as to grade of offense, see post, § 310.

Sufficiency of proof, see post, § 257.

Aider by verdict, see "Indictment and Information," § 203.

Conviction of offense included in charge, see "Indictment and Information," §§ 188, 189.

Duplicity, see "Indictment and Information," § 125.

Joinder of counts, see "Indictment and Information," §§ 128, 129.

Language of statute, see "Indictment and Information," § 110.

Motion to quash, see "Indictment and Information," § 137.

Necessity of prosecuting by indictment, see "Indictment and Information," § 3.

Variance between affidavit and information, see "Indictment and Information," § 122.

#### § 142. Issues, proof, and variance.

##### Cross-Reference.

Conviction as accessory under indictment as principal, see "Indictment and Information," § 174.

##### Annotation.

Variance as to name of deceased as ground of reversal in homicide.—38 L. R. A. (N. S.) 187, note.

Correspondence between allegation and proof of time of committing homicide.—3 L. R. A. (N. S.) 1024, note.

### VII. EVIDENCE.

##### Cross-References.

Immunity from prosecution of person testifying for state, see "Criminal Law," § 42.

Judicial notice, see "Criminal Law," § 304.

Materiality of testimony as affecting liability for perjury, see "Perjury," § 11.

#### (A) PRESUMPTIONS AND BURDEN OF PROOF.

##### Cross-Reference.

Proof of venue of prosecution, see "Criminal Law," § 335.

#### § 143. Corpus delicti.

##### Cross-References.

Instructions, see post, § 284.

Sufficiency of evidence, see post, § 228.

##### Annotation.

Necessity of proving corpus delicti in prosecution for homicide.—68 L. R. A. 35, 46, 53, note.

#### § 144. Elements of offense in general.

#### § 145. Intent.

##### Cross-References.

Absence of intent as element of manslaughter, see ante, § 36.

Instructions, see post, § 286.

Intent as element of murder, see ante, § 9.

Sufficiency of proof, see post, § 230.

#### § 146. Malice.

##### Cross-References.

Absence of malice as element of manslaughter, see ante, § 35.

As element of murder, see ante, §§ 11-13.

Instructions, see post, § 286.

Sufficiency of proof, see post, § 231.

##### Annotation.

Presumption as to implied malice arising from act of killing.—38 L. R. A. (N. S.) 1077, note.

Presumption of malice from killing.—4 L. R. A. (N. S.) 934, note.

**§ 147. Deliberation and premeditation.***Cross-References.*

- As element of first-degree murder, see ante, § 22.  
 As element of murder in general, see ante, § 14.  
 As element of second-degree murder, see ante, § 23.  
 Instructions, see post, § 286.  
 Sufficiency of proof, see post, § 282.

**§§ 148-150. (See Analysis.)****§ 151. Excuse or justification.***Annotation.*

- Burden of proving self-defense by preponderance of evidence in prosecution for homicide.—19 L. R. A. (N. S.) 492, note.  
 Burden of proof of freedom from fault in case of homicide on plea of self-defense.—45 L. R. A. 706, note.

**§ 152. Grade or degree of offense.***Cross-References.*

- Admissibility of evidence, see post, § 199.  
 Degrees of manslaughter, see ante, §§ 77-79.  
 Degrees of murder, see ante, §§ 21-24.  
 Instructions, see post, §§ 307-310.  
 Questions for jury, see post, § 282.  
 Sufficiency of evidence, see post, §§ 250, 252-255.

*Annotation.*

- Presumption as to distinctive elements of murder in first degree from use of deadly weapon.—34 L. R. A. (N. S.) 74, note.

**(B) ADMISSIBILITY IN GENERAL.***Cross-References.*

- Harmless error in admission of evidence, see post, §§ 338, 339.  
 Acts and declarations of conspirators and codefendants, see "Criminal Law," §§ 422-428.  
 Admissions, see "Criminal Law," §§ 406, 407, 409.  
 Best and secondary evidence, see "Criminal Law," §§ 398-404.  
 Confessions, see "Criminal Law," §§ 516-538.  
 Declarations, see "Criminal Law," §§ 412, 414, 415, 417-421.  
 Demonstrative evidence, see "Criminal Law," §§ 404, 429-447.  
 Evidence obtained by means of confession, see "Criminal Law," § 537.  
 Expert testimony, see "Criminal Law," §§ 469-476.  
 Hearsay, see "Criminal Law," §§ 419-421.  
 Matters explanatory of facts in evidence or of inferences therefrom, see "Criminal Law," § 361.  
 Opinion evidence, see "Criminal Law," §§ 448-494.  
 Other offenses in general, see "Criminal Law," §§ 369, 370, 372-374.

- Other offenses in prosecution of husband for attempt to poison wife, see "Criminal Law," § 369.  
 Parol evidence, see "Criminal Law," § 447.  
 Privileged communications, see "Witnesses," §§ 184-223.  
 Res gestæ, see "Criminal Law," §§ 363-368.  
 Self-serving declarations, see "Criminal Law," § 413.

**§ 153. Corpus delicti.***Cross-References.*

- Instructions, see post, § 284.  
 Sufficiency of evidence, see post, § 228.

*Annotation.*

- Proof of corpus delicti in prosecution for homicide.—68 L. R. A. 57, 73, 75, 76, 77, 78, note.

**§ 154. Identity of deceased.****§ 155. Intent, malice, deliberation, and premeditation.***Cross-References.*

- Absence of malice as element of manslaughter, see ante, § 35.  
 Deliberation and premeditation as element of murder in general, see ante, § 14.  
 Deliberation and premeditation as element of murder in second degree, see ante, § 23.  
 Deliberation as element of murder in first degree, see ante, § 22.  
 Instructions, see post, § 286.  
 Intent as element of murder, see ante, § 9.  
 Malice as element of murder, see ante, §§ 11-13.  
 Sufficiency of proof as to deliberation, see post, § 232.  
 Sufficiency of proof as to intent, see post, § 230.  
 Other offenses showing, see "Criminal Law," § 371.  
 Res gestæ, see "Criminal Law," § 365.

**§ 156.— In general.****§ 157.— Previous quarrels and ill feeling.****§ 158.— Previous threats and expressions of ill will by accused.***Cross-References.*

- Evidence as to threats by accused to show degree of homicide, see post, § 199.  
 Threats as provocation, see ante, § 45.  
 Threats as substantive offense, see ante, § 92.  
 Threats by deceased, see post, § 190.

- (a) Since, in a trial for assault with intent to murder defendant's brother-in-law, it was essential to a conviction to show malice, evidence that before the assault defendant told witness he was going to shoot the brother-in-law and that he told the latter's wife that he

was going to kill the whole family, was admissible.—*Esterline v. State*, 105 Md. 629, 66 Atl. 269.

(b) In a prosecution for murder, declarations of the prisoner antecedent to the murder, are admissible to prove the intent.—*State v. Ridgely*, 2 H. & McH. 120, 1 Am. Dec. 372.

#### § 159.— Previous hostile acts or conduct of accused.

(a) In a case of murder, it is competent to prove brutal conduct by the traverser towards the deceased for several days previous to the death, as evidence of malice.—*Williams v. State*, 64 Md. 384, 1 Atl. 887. [Cited and annotated in 62 L. R. A. 278, on evidence of other crimes in criminal cases; in 29 L. R. A. (N. S.) 537, on opinion of expert as basis of question to other witnesses.]

#### § 160.— Preparations.

(a) Since in a trial for assault with intent to murder defendant's brother-in-law it was essential to a conviction to show malice, evidence that defendant possessed a pistol before the assault was admissible.—*Esterline v. State*, 105 Md. 629, 66 Atl. 269.

(b) On a trial for wife murder, at a place where defendant's wife had met him at his request, where evidence has been given that a few nights before the killing defendant assaulted his wife, and threatened to kill her, evidence is admissible, to show premeditation, that on the next evening, and two days before the killing, the wife and her sister met by appointment with defendant at a certain house, and that when they were about to start home, defendant proposed that they should take an unfrequented path over a mountain.—*Garlitz v. State*, 71 Md. 293, 18 Atl. 39, 4 L. R. A. 601. [Cited and annotated in 5 L. R. A. (N. S.) 817, on heat of passion mitigating or reducing degree of homicide; in 35 L. R. A. (N. S.) 1000, on opinion gained from newspaper as disqualifying juror in criminal case; in 38 L. R. A. (N. S.) 100, on degree of homicide in killing wife, as affected by her confession of, or declaration of intent to commit adultery.]

#### § 161.— Nature and circumstances of act.

##### Cross-Reference.

Opinion evidence, see "Criminal Law," § 459.

#### § 162. Commission of or participation in act by accused in general.

#### § 163. Character and habits of parties.

##### Cross-References.

Competency of negative testimony as to character and habits of parties, see "Criminal Law," § 387.

Competency of witnesses as to character, see "Witnesses," § 37.

Limiting number of witnesses, see "Criminal Law," § 676.

(a) In a prosecution for murder, evidence of deceased's habits of drinking at times, extending over a period commencing long previous to the commission of the crime and ending at the time of its commission, was irrelevant, and tended to confuse the issue.—*Birkenfeld v. State*, 104 Md. 253, 65 Atl. 1.

[Cited and annotated in 18 L. R. A. (N. S.) 787, 803, as to when confession voluntary.]

(b) On a prosecution for an assault with intent to kill, defendant cannot, for the purpose of showing that he knew he was dealing with a dangerous man, after giving evidence of the general reputation of the man assaulted as a dangerous man, show that he pointed a gun at a third person on a former occasion.—*Jenkins v. State*, 80 Md. 72, 30 Atl. 566. [Cited and annotated in 3 L. R. A. (N. S.) 371, on character and reputation of deceased as affecting homicide; in 3 L. R. A. (N. S.) 524, on evidence of antecedent threats in homicide; in 14 L. R. A. (N. S.) 709, 713, on evidence of specific instances to prove character.]

(c) In a homicide case, the general reputation in the neighborhood that the deceased was jealous of his wife could not possibly furnish any explanation of the circumstances under which his life was taken, and was therefore not admissible in evidence.—*Costley v. State*, 48 Md. 175.

#### § 164. Physical condition of parties.

##### Cross-Reference.

Opinion evidence, see "Criminal Law," § 455.

(a) Where, in a prosecution for homicide, insanity was not pleaded as a defense, and there was undisputed evidence of deliberation and premeditation, evidence as to defendant's feelings and condition of mind on the day of the homicide was inadmissible.—*Handy v. State*, 101 Md. 39, 60 Atl. 452, 109 Am. St. Rep. 558.

**§ 165. Personal relations of parties.****Cross-References.**

Declaration of third persons showing, see "Criminal Law," § 417.

**§ 166. Motive.****Cross-References.**

Opinions of deceased as to reasons and motive for killing, see post, § 215.

Weight and sufficiency of evidence, see post, § 233.

Other offenses showing, see "Criminal Law," § 371.

Res gestæ, see "Criminal Law," § 365.

**Annotation.**

Right on trial for homicide to show immorality of deceased as bearing upon defendant's intent or motive.—36 L. R. A. (N. S.) 397, note.

(a) Where defendant was charged with having caused deceased's death by an abortion, evidence of her improper relations with others held inadmissible to negative motive.—*Meno v. State*, 117 Md. 435, 83 Atl. 759. [Cited and annotated in 52 L. R. A. (N. S.) 152, on weight of dying declarations.]

**§ 167. Threats, preparations, and previous attempts.****Cross-References.**

As showing degree, see post, § 253.

Threats as substantive offense, see ante, § 92.

Hearsay, see "Criminal Law," § 421.

(a) Evidence is admissible that a witness felt a pistol on defendant's person shortly before the shooting, and asked him what he was going to do with it.—*Garlitz v. State*, 71 Md. 293, 18 Atl. 39, 4 L. R. A. 601. [Cited and annotated, see supra, § 159.]

(b) A person indicted for assault, committed with intent to murder, may testify as to the purpose for which he procured the instrument with which he committed the assault.—*Fenwick v. State*, 63 Md. 239. [Cited and annotated in 23 L. R. A. (N. S.) 373, 389, on right of one to testify as to his intent.]

**§ 168. Ability and opportunity.****§ 169. Circumstances preceding act.**

(a) In a prosecution for homicide, evidence that before the killing accused, who was drunk, exhibited a pistol and wanted to shoot at a clock, and said that he was going to shoot up the town, is admissible to show his reckless and evil disposed frame of mind.—*Cross v. State*, 118 Md. 660, 86 Atl. 223.

(b) In a prosecution for homicide, evidence that accused some time previously stated that he was going to get drunk some day and shoot up the town, and that deceased's mother was trying to get him into trouble and had said things about him, and that somebody was getting too familiar about his place, is inadmissible, not being connected with deceased.—*Cross v. State*, 118 Md. 660, 86 Atl. 223.

(c) It is competent in a case of homicide to put in evidence the conduct, actions, and general behavior of the accused immediately before the killing, in order to show that he was armed, in a vicious humor, etc., even though such testimony discloses another offense.—*Kernan v. State*, 65 Md. 253, 4 Atl. 124.

(d) Declarations of the prisoner antecedent to the fact are admissible, when they tend to explain or reconcile his conduct.—*State v. Ridgely*, 2 H. & McH. 120, 1 Am. Dec. 372.

(e) Declarations of the deceased antecedent to the mortal stroke are not admissible.—*State v. Ridgely*, 2 H. & McH. 120, 1 Am. Dec. 372.

**§ 170. Identity and presence of accused.****Cross-References.**

Demonstrative evidence of, see "Criminal Law," § 404.

Opinion evidence as to footprints or tracks, see "Criminal Law," § 459.

**§ 171. Nature of act and attendant circumstances in general.****Cross-References.**

Opinion evidence, see "Criminal Law," §§ 459, 463.

Res gestæ, see "Criminal Law," §§ 366, 367.

**§ 172. Commission of or attempt to commit other offense or unlawful act.****Cross-References.**

Allegations in indictment, see ante, § 138.

As element of murder, see ante, § 13.

Instructions, see post, § 289.

Liability for manslaughter, see ante, §§ 62-67.

Sufficiency of proof of other offense, see post, § 235.

Other offenses in general, see "Criminal Law," § 369.

**Annotation.**

The evidence on trial for homicide in the commission of unlawful acts not felonies.—63 L. R. A. 397, note.



### § 173. Means or instrument used.

#### Cross-References.

- Affecting responsibility for homicide in general, see ante, § 3.
- Allegations in indictment, see ante, § 135.
- As affected by provocation, see ante, § 52.
- As affecting liability for manslaughter, see ante, § 59.
- As element of murder, see ante, § 16.
- Instructions, see post, § 290.
- Weight and sufficiency of evidence, see post, § 236.
- Opinion evidence, see "Criminal Law," §§ 459, 471, 476, 479.

#### Annotation.

- Admissibility of opinion evidence as to kind or nature of weapon or object with which wound was inflicted.—*L. R. A.* 1915B, 1143, note.

### § 174. Subsequent incriminating or exculpatory circumstances.

#### Cross-References.

- Declarations by deceased exculpating accused, see "Criminal Law," § 415.
- Declarations by decedent, in general, see "Criminal Law," § 415.
- Res gestæ*, see "Criminal Law," § 367.

- (a) Evidence as to movements and declarations of accused between homicide and his arrest held competent.—*McCleary v. State*, 122 Md. 394, 89 Atl. 1100.

### § 175. Cause of death.

#### Cross-References.

- As affecting responsibility in general, see ante, § 5.
- Instructions, see post, § 291.
- Sufficiency of proof, see post, § 235.
- Opinion evidence, see "Criminal Law," §§ 477-481, 493, 494.

#### Annotation.

- Admissibility of coroner's finding to show cause of death in prosecution for homicide.—68 L. R. A. 285, note.

- (a) The fact that a post mortem examination was made a long time after death is no reason within itself for its exclusion as evidence. If the body is in such a state of preservation that the jury can judge whether its condition was caused by ante or post mortem injuries, such examination is competent evidence.—*Williams v. State*, 64 Md. 384, 1 Atl. 887. [Cited and annotated in 62 L. R. A. 278, on evidence of other crimes in criminal cases; in 29 L. R. A. (N. S.) 537, on opinion of expert as basis of question to other witnesses.]

### §§ 176-178. (See Analysis.)

### § 179. Insanity.

#### Cross-References.

- As defense to murder, see ante, § 27.
- Instructions, see post, § 294.
- Question for jury, see post, § 270.
- Sufficiency of proof, see post, § 237.
- Opinion evidence, see "Criminal Law," §§ 456, 464, 474, 483-490, 493.

### § 180. Intoxication.

#### Cross-References.

- As defense to murder, see ante, § 28.
- Excuse for homicide, see ante, § 101.
- Instructions, see post, § 294.
- Questions for jury, see post, § 270.
- Reducing grade to manslaughter, see ante, § 81.
- Sufficiency of proof, see post, § 238.
- Evidence of intoxication of accused to show degree of homicide, see post, § 199.
- Opinion evidence, see "Criminal Law," § 457.

### § 181. Passion and provocation.

#### Cross-References.

- Adultery of husband or wife as provocation, see ante, § 47.
- Defamation as provocation, see ante, § 46.
- Insult as provocation, see ante, § 45.

- (a) Evidence of defendant's conduct and demeanor on the evening of and before the killing, and as to his temperament and disposition, to be followed by evidence of a circumstance of provocation, is properly excluded, where the defense of insanity is not set up, and where defendant is allowed full benefit of circumstances alleged as provocation.—*Garlitz v. State*, 71 Md. 293, 18 Atl. 39, 4 L. R. A. 601. [Cited and annotated in 5 L. R. A. (N. S.) 817, on heat of passion mitigating or reducing degree of homicide; in 35 L. R. A. (N. S.) 1000, on opinion gained from newspaper as disqualifying juror in criminal case; in 38 L. R. A. (N. S.) 100, on degree of homicide in killing wife, as affected by her confession of, or declaration of intent to commit adultery.]

- (b) Where it appears that at the time of the killing defendant was living apart from his wife, and he testifies on his direct examination that he killed her while under the influence of frenzy caused by her confession of infidelity, it may be shown on his cross-examination that, while living apart from his wife, he maintained improper and criminal relations with other women, as tending to show the improbability of his being frenzied by his wife's confession.—*Garlitz v. State*, 71 Md. 293, 18 Atl. 39, 4 L. R. A. 601. [Cited and annotated, see supra.]

(c) On a trial of C. for murder of S., testimony of S.'s widow, offered on C.'s behalf, that the killing grew out of a quarrel between C. and S., occasioned by S.'s having charged C. with being too intimate with her, is properly excluded.—*Costley v. State*, 48 Md. 175.

§§ 182-185. (See Analysis.)

§§ 186-195. **Self-defense.**

*Cross-References.*

Aggression by person provoked, see ante, § 51.

Aggression as excuse for homicide, see ante, § 112.

As defense to homicide in general, see ante, §§ 109-121.

Instructions, see post, § 300.

Nature and elements, see ante, §§ 109-121.

Presumptions, see ante, § 151.

Questions for jury, see post, § 276.

Sufficiency of evidence, see post, § 244.

Materiality of, as affecting grounds for continuance, see "Criminal Law," § 595.

Threats as ground for apprehension of danger, see ante, § 116.

Threats as provocation, see ante, § 45.

Threats by accused, see ante, § 158.

(a) Evidence of previous threats of deceased against defendant is inadmissible, unless there is some proof of an attack or overt hostile act showing an intent to carry the threats into execution.—*Turpin v. State*, 55 Md. 462. [Cited and annotated in 3 L. R. A. (N. S.) 524, 527, on evidence of antecedent threats in homicide.] *Jenkins v. State*, 80 Md. 72, 30 Atl. 566. [Cited and annotated in 3 L. R. A. (N. S.) 371, on character and reputation of deceased as affecting homicide; in 3 L. R. A. (N. S.) 524, on evidence of antecedent threats in homicide; in 14 L. R. A. (N. S.) 709, 713, on evidence of specific instances to prove character.]

§ 196. **Defense of another.**

*Cross-References.*

As excuse for homicide, see ante, § 122.

Insult to or defamation of others as provocation, see ante, § 49.

Sufficiency of proof, see post, § 245.

Threats or injury to others as provocation, see ante, § 48.

§ 197. **Defense of habitation.**

*Cross-References.*

As excuse for homicide, see ante, § 123.

Instructions, see post, § 302.

§ 198. **Defense of property.**

*Cross-References.*

As excuse for homicide, see ante, § 124.

Killing in resisting trespass, see ante, § 57.

§ 199. **Grade or degree of offense.**

*Cross-References.*

Degree of manslaughter, see ante, §§ 77-79.

Degree of murder, see ante, §§ 21-24.

Instructions, see post, §§ 307-310.

Presumption and burden of proof, see ante, § 152.

Questions for jury, see post, § 282.

Specification of, in indictment, see ante, § 139.

Sufficiency of evidence, see post, §§ 250, 252-255.

(C) **DYING DECLARATIONS.**

*Cross-References.*

Reception in evidence, see post, § 267.

Review of rulings on as dependent on objections or exceptions in lower court, see post, § 325.

Absence of evidence to impeach as ground for continuance, see "Criminal Law," § 596.

As res gestæ, see "Criminal Law," § 366.

Best and secondary evidence, see "Criminal Law," § 400.

Compelling production on preliminary examination, see "Criminal Law," § 234.

Continuance to procure statement of, see "Criminal Law," § 598.

Declarations in general, see "Criminal Law," § 415.

Estoppel to allege error, see "Criminal Law," § 1137.

Instructions as to weight and effect, see "Criminal Law," § 763.

Of victim of abortion, see "Abortion," § 20.

Refusal to compel production as denial of constitutional right to compulsory process for witnesses, see "Witnesses," § 2.

Self-serving dying declarations, see "Criminal Law," § 413.

Taking to jury room, see "Criminal Law," § 858.

Use by witness to refresh memory, see "Witnesses," § 255.

Waiver of objections as to admissibility, see "Criminal Law," § 899.

§ 200. **Grounds of admissibility in general.**

§§ 201-204. **Condition of person making declaration.**

*Annotation.*

Statements of deceased made under sense of impending death.—56 L. R. A. 410; 30 L. R. A. (N. S.) 392, notes.

Time elapsing between declaration and death.—56 L. R. A. 421; 1 L. R. A. (N. S.) 419, notes.

Dying declarations made under sense of impending death; reaffirmance.—56 L. R. A. 382, note.

(a) Where decedent was informed by her physician that she was going to die, and indicated that she realized her situation, her statement then made to a detective was ad-

missible as a dying declaration.—*Meno v. State*, 117 Md. 435, 83 Atl. 759. [Cited and annotated in 52 L. R. A. (N. S.) 152, on weight of dying declarations.]

(b) A girl on whom an abortion had been performed called to her mother to "get help," saying: "If you don't send for the doctor, I will die." During several hours thereafter she repeatedly said she knew she was dying, and the mother testified that she "could see death in her eyes." Held, that, a statement as to who performed the abortion, made after the repeated assertions that she knew she would die, was admissible as a dying declaration.—*Hawkins v. State*, 98 Md. 355, 57 Atl. 27. [Cited and annotated in 63 L. R. A. 917, on homicide in attempting or committing abortion; in 30 L. R. A. (N. S.) 398, on dying declarations: how sense of impending death evidenced.]

(c) Where a patient in severe pain said to a physician, "Oh, doctor, I am dying; I want you to relieve me;" and subsequently continually made practically the same statement, always asking for relief—statements made thereafter were admissible as dying declarations, the request for relief referring to relief from pain, and not showing hope of recovery.—*Hawkins v. State*, 98 Md. 355, 57 Atl. 27. [Cited and annotated, see supra.]

(d) Where one witness in a prosecution for homicide by abortion fixed the mother's declaration of belief that she was dying as made before the dying declaration testified to by another witness, an objection to the testimony of the second witness on the ground that he could not say that the dying declaration was made after the woman expressed her expectation of death was not well taken, since it was only necessary that the declaration of expectation of death should precede in fact the dying declaration.—*Worthington v. State*, 92 Md. 222, 48 Atl. 355, 56 L. R. A. 353, 84 Am. St. Rep. 506. [Cited and annotated in 63 L. R. A. 904, 905, 918, on homicide in attempting or committing abortion; in 16 L. R. A. (N. S.) 660, on jury's right to determine existence of facts essential to admissibility of dying declarations; in 21 L. R. A. (N. S.) 840, on opinions and conclusions as subjects of dying declarations; in 37 L. R. A. (N. S.) 252, 253, 254, on admissibility of contradictory statements to impeach dying declarations; in 40 L. R. A. (N. S.) 1195, on admissibility of dying declaration of person for whose death accused not on trial.]

(e) Where the evidence in a prosecution for homicide by abortion showed that the mother believed and repeated daily for several days that she was dying, and that death ensued, sufficient foundation was laid for the admission of her dying declaration.—*Worthington v. State*, 92 Md. 222, 48 Atl. 355, 56 L. R. A. 353, 84 Am. St. Rep. 506. [Cited and annotated, see supra.]

### § 205. Circumstances attendant on making of declaration.

### §§ 206-209. Making and form of declaration.

#### Annotation.

Form and completeness of declaration; oral or written.—56 L. R. A. 423, note.

(a) A dying declaration offered in evidence in a prosecution for homicide, objected to because defendant's name was put into deceased's mouth, was properly admitted, since dying declarations in response to leading questions or even urgent solicitation are admissible.—*Worthington v. State*, 92 Md. 222, 48 Atl. 355, 56 L. R. A. 353, 84 Am. St. Rep. 506. [Cited and annotated, see supra, §§ 201-204.]

### § 210. Ratification of previous declaration.

#### Cross-Reference.

Competency of witness to prove declarations, see "Witnesses," § 195.

### § 211. Prosecutions in which declarations are admissible.

(a) Where the indictment in a prosecution for manslaughter by abortion followed the usual form of indictments in such cases, and could not be construed into an indictment for the statutory offense of abortion, the contention that the mother's dying declarations were inadmissible because the indictment did not charge any form of homicide, but was for such statutory offense, was not well founded.—*Worthington v. State*, 92 Md. 222, 48 Atl. 355, 56 L. R. A. 353, 84 Am. St. Rep. 506. [Cited and annotated, see supra, §§ 201-204.]

### §§ 212, 213. (See Analysis.)

### § 214. Subject-matter and relevancy.

#### Annotation.

Subject of declarations.—56 L. R. A. 369, note.

### § 215. Competency of declaration as evidence.

#### Annotation.

Dying declarations as evidence.—56 L. R. A. 353, note.

### § 216. Preliminary evidence.

(a) On cross-examination in a prosecution for homicide decedent's mother was asked if she did not at a former trial testify that the declaration was made before the statements of impending death, and said that at the former trial she testified that at the time the daughter said "Send for a doctor" she asked her what was the matter, and, after being told of the abortion, was also told who performed it; but she adhered to her statement that before the declaration which had been admitted was made the daughter had said she knew she was dying. *Held*, that, the witness' testimony was not so weakened by the cross-examination as to require the striking out of the declaration.—*Hawkins v. State*, 98 Md. 355, 57 Atl. 27. [Cited and annotated in 63 L. R. A. 917, on homicide in attempting or committing abortion; in 30 L. R. A. (N. S.) 398, on dying declarations: how sense of impending death evidenced.]

(b) In a prosecution for homicide an objection to a question regarding decedent's expression of expectation of death, asking, "What was the impression made on your mind as to what she said?" was properly overruled, since it was manifestly the witness' impression or recollection of the form of the declaration, rather than his impression as to the subject of it, which was sought.—*Worthington v. State*, 92 Md. 222, 48 Atl. 355, 56 L. R. A. 353, 84 Am. St. Rep. 506. [Cited and annotated, see supra, §§ 201-204.]

### § 217. Method of proof.

### § 218. Determination of question of admissibility.

#### Cross-Reference.

Sufficiency of objection to declaration admissible in part, see "Criminal Law," § 695.

(a) Whether decedent had sufficient understanding when she made a dying declaration to entitle it to probative force held for the jury.—*Meno v. State*, 117 Md. 435, 83 Atl. 759. [Cited and annotated in 52 L. R. A. (N. S.) 152, on weight of dying declarations.]

(b) Where a dying declaration stating that "Dr. Worthington" committed the abortion which caused decedent's death was offered in evidence in a prosecution for manslaughter, an objection thereto that it did not identify the defendant was properly overruled, since that was a question for the jury.—*Worthington v. State*, 92 Md. 222, 48 Atl. 355, 56 L. R. A. 353, 84 Am. St. Rep. 506. [Cited and annotated, see supra, §§ 201-204.]

### §§ 219-221. (See Analysis.)

#### (D) PROCEEDINGS AT INQUEST.

#### Cross-References.

Denial of right to confront witnesses, see "Criminal Law," § 662.

Evidence at preliminary examination or at former trial, see "Criminal Law," §§ 539-548.

Exclusion of improper evidence, see "Criminal Law," § 674.

### §§ 222-227. (See Analysis.)

#### (E) WEIGHT AND SUFFICIENCY.

#### Cross-References.

Acts and declarations of conspirators and codefendants, see "Criminal Law," § 428.

Circumstantial evidence, see "Criminal Law," § 552.

Conclusiveness of evidence on party introducing it, see "Criminal Law," § 556.

Confessions, see "Criminal Law," §§ 534, 535, 538.

Credibility of witnesses as affecting, see "Criminal Law," § 553.

Degree of proof, see "Criminal Law," § 560.

Identity of persons and things, see "Criminal Law," § 566.

Testimony of accomplices and codefendants, see "Criminal Law," §§ 507-512.

Venue of prosecution, see "Criminal Law," § 564.

Weight and effect of character evidence, see "Criminal Law," § 381.

### § 228. Corpus delicti.

#### Cross-References.

Admissibility of evidence, see ante, § 153.

Instructions, see post, § 284.

Presumption and burden of proof, see ante, § 143.

#### Annotation.

Proof of corpus delicti in prosecution for homicide.—68 L. R. A. 73, 75-78, note.

### § 229. Identity of deceased.

### § 230. Intent.

#### Cross-References.

Absence of, as element of manslaughter, see ante, § 36.

Admissibility of evidence, see ante, §§ 156-161.

Allegations in indictment, see ante, § 128.  
As element of murder, see ante, § 9.  
Instructions, see post, § 286.  
Presumptions and burden of proof, see ante, § 145.

### § 231. Malice.

#### *Cross-References.*

Absence of, as element of manslaughter, see ante, § 35.  
Admissibility of evidence, see ante, §§ 156-161.  
Allegations in indictment, see ante, § 129.  
As element of murder, see ante, §§ 11-13.  
Instructions, see post, § 286.  
Presumption and burden of proof, see ante, § 146.

### § 232. Deliberation and premeditation.

#### *Cross-References.*

Admissibility of evidence, see ante, §§ 156-161.  
Allegations in indictment, see ante, § 130.  
As element of first-degree murder, see ante, § 22.  
As element of murder in general, see ante, § 14.  
As element of second-degree murder, see ante, § 23.  
Instructions, see post, § 286.  
Presumptions and burden of proof, see ante, § 147.  
Rising presumption of malice, see ante, § 146.

### § 233. Motive.

#### *Cross-References.*

Admissibility of evidence, see ante, § 166.  
Presumptions and burden of proof, see ante, § 144.

### § 234. Commission of or participation in act by accused.

#### *Cross-References.*

Admissibility of evidence in general, see ante, § 162.  
Circumstantial evidence, see "Criminal Law," § 552.  
Testimony of accomplices and codefendants, see "Criminal Law," § 511.

### § 235. Commission of or attempt to commit other offense.

#### *Cross-References.*

Admissibility of evidence, see ante, § 172.  
Allegation in indictment, see ante, § 138.  
As element of murder, see ante, § 18.  
As showing degree, see post, § 253.  
Instructions, see post, § 289.  
Liability for manslaughter, see ante, §§ 62-67.

#### *Annotation.*

Sufficiency of evidence in prosecution for homicide in commission of an unlawful act.—63 L. R. A. 398, note.  
Sufficiency of evidence in prosecution for homicide in commission of, or attempt to commit, an abortion.—63 L. R. A. 918, note.

### § 236. Cause of death.

#### *Cross-References.*

Admissibility of evidence, see ante, § 175.  
Cause as affecting responsibility, see ante, § 5.  
Instructions, see post, § 291.  
Presumptions, see ante, § 149.

### § 237. Insanity.

#### *Cross-References.*

Admissibility of evidence, see ante, § 179.  
Instructions, see post, § 294.  
Presumptions, see ante, § 151.  
Question for jury, see post, § 270.

### § 238. Intoxication.

#### *Cross-References.*

As defense to murder, see ante, § 28.  
Excuse for homicide, see ante, § 101.  
Instructions, see post, § 294.  
Question for jury, see post, § 270.  
Reducing grade to manslaughter, see ante, § 81.  
Positive and negative testimony, see "Criminal Law," § 551.

### § 239. Passion and provocation.

#### *Cross-References.*

Admissibility of evidence, see ante, § 181.  
Instructions, see post, § 295.  
Passion as element of manslaughter, see ante, §§ 39, 40.  
Question for jury, see post, § 271.

### § 240. Unlawful character of act of deceased, and resistance by accused.

#### *Cross-References.*

Admissibility of evidence, see ante, § 182.  
As element of manslaughter, see ante, §§ 54-58.

### § 241. Excuse or justification in general.

### § 242. Exercise of authority or duty.

#### *Cross-Reference.*

As justification in general, see ante, §§ 105, 106.

### § 243. Prevention of commission of offense in general.

#### *Cross-References.*

Admissibility of evidence, see ante, § 185.  
As justification in general, see ante, § 107.

### § 244. Self-defense.

#### *Cross-References.*

Admissibility of evidence, see ante, §§ 187-195.  
Instructions, see post, § 300.  
Nature and elements, see ante, §§ 109-121.  
Presumptions, see ante, § 151.

#### *Annotation.*

Applicability of rule of reasonable doubt to self-defense in homicide.—19 L. R. A. (N. S.) 483; 31 L. R. A. (N. S.) 1166, notes.

Burden of proving self-defense by preponderance of evidence on prosecution for homicide.—19 L. R. A. (N. S.) 492, note.

### § 245. Defense of another.

#### *Cross-References.*

Admissibility of evidence, see ante, § 196.  
As excuse for homicide, see ante, § 122.  
Insult to or defamation of others as provocation, see ante, § 49.  
Threats or injury to another as provocation, see ante, § 48.

### § 246. Defense of habitation.

#### *Cross-References.*

As excuse for homicide, see ante, § 123.  
Instructions, see post, § 302.  
Trespass as provocation, see ante, § 50.

### § 247. Defense of property.

#### *Cross-References.*

Admissibility of evidence, see ante, § 198.  
As excuse for homicide, see ante, § 124.  
Trespass as provocation, see ante, § 50.

### § 248. Accident or misfortune.

#### *Cross-Reference.*

As excuse for homicide, see ante, § 125.

#### *Annotation.*

Competency and sufficiency of evidence in case of homicide by misadventure.—3 L. R. A. (N. S.) 1161, note.

### § 249. Principals and accessories.

#### *Cross-References.*

Instructions, see post, § 305.  
Liability for assault with intent to kill, see ante, § 100.  
Liability for manslaughter, see ante, § 83.  
Liability for murder, see ante, § 30.  
Question for jury, see post, § 281.  
Variance, see ante, § 142.

### § 250. Degree of homicide in general.

#### *Cross-References.*

Admissibility of evidence, see ante, § 199.  
Allegations as to degrees, see ante, § 139.  
Instructions, see post, § 307.  
Presumptions, see ante, § 152.  
Questions for jury, see post, § 282.

### §§ 251-254. Degree of murder.

#### *Cross-References.*

Allegations as to degrees, see ante, § 139.  
Elements of degrees, see ante, §§ 21-24.  
Instructions, see post, § 308.  
Presumptions, see ante, § 152.  
Question for jury, see post, § 282.

### § 255. Degree of manslaughter.

#### *Cross-References.*

Admissibility of evidence, see ante, § 199.  
Instructions, see post, § 309.  
Nature and elements in general, see ante, §§ 77-79.  
Presumptions, see ante, § 152.

### § 256. Attempt, threats, or solicitation to kill.

#### *Cross-References.*

Allegations in indictment, see ante, § 140.  
Elements of attempt to murder, see ante, § 25.  
Elements of solicitation to murder, see ante, § 26.  
Threats, see ante, § 92.

### § 257. Assault with intent to kill.

#### *Cross-References.*

Elements of offense, see ante, §§ 84-100.  
Indictment, see ante, § 141.  
Instruction as to grade or degree, see post, § 310.

## VIII. TRIAL.

### (A) CONDUCT IN GENERAL.

#### *Cross-References.*

Adjournment pending trial, see "Criminal Law," § 649.  
Application and affidavits for continuance, see "Criminal Law," §§ 603, 608, 611.  
Appointment of interpreter, see "Criminal Law," § 642.  
Argument and conduct of counsel, see "Criminal Law," §§ 699-730.  
Change of judges pending trial, see "Criminal Law," § 633.  
Constitutional right of accused to speedy trial, see "Criminal Law," § 573.  
Continuance before trial, see "Criminal Law," §§ 582, 586.  
Counsel for accused, see "Criminal Law," § 641.  
Counsel for prosecution, see "Criminal Law," §§ 639-640.  
Custody and restraint of accused, see "Criminal Law," § 637.  
Custody, conduct, and deliberations of jury, see "Criminal Law," §§ 848-868.  
Experiments and tests, see "Criminal Law," § 650.  
Grounds for arrest of judgment, see "Criminal Law," §§ 968, 970, 971.  
Grounds for continuance, see "Criminal Law," §§ 589, 591, 593-600, 611.  
Harmless error in conduct of jury, see "Criminal Law," § 1174.  
Indorsement of names of witnesses on indictment or information, see "Criminal Law," § 628.  
Jury and right to trial by jury, see "Jury." Operation and effect of grant or refusal of continuance, see "Criminal Law," § 616.  
Order of proof, see "Criminal Law," § 686.  
Presence and conduct of bystanders, see "Criminal Law," § 659.  
Presence of accused, see "Criminal Law," § 636.  
Presence of judge, see "Criminal Law," § 634.  
Publicity of proceedings, see "Criminal Law," § 635.  
Regulation in general, see "Criminal Law," § 633.  
Remarks and conduct of judge, see "Criminal Law," §§ 655, 656.

Second or further continuance, see "Criminal Law," § 614.  
 Separate trial of codefendants, see "Criminal Law," § 622.  
 Separate trial of issue of insanity, see "Criminal Law," §§ 624, 625.  
 Service of copy of indictment or information, see "Criminal Law," § 627.  
 Service of list of jurors, see "Criminal Law," § 631.  
 Service of list of witnesses, see "Criminal Law," § 629.  
 Time for trial, see "Criminal Law," § 575.  
 Time to prepare defense, see "Criminal Law," § 577.  
 Visiting jail by jury pending trial, see "Criminal Law," § 855.  
 Waiver and correction of irregularities and errors, see "Criminal Law," §§ 895-904.

§§ 258-262. (See Analysis.)

§§ 263-267. Reception of evidence.

*Cross-References.*

Harmless error, see post, §§ 338, 339.  
 Compelling calling of witness, see "Criminal Law," § 666.  
 Consultation between counsel and witnesses, see "Criminal Law," § 666½.  
 Effect of admission, see "Criminal Law," § 673.  
 Election between acts, see "Criminal Law," § 678.  
 Estoppel or waiver of right to object, see "Criminal Law," § 692.  
 Identification of accused, see "Criminal Law," § 652.  
 Motion to strike out, see "Criminal Law," § 696.  
 Number of witnesses, see "Criminal Law," § 676.  
 Objections to evidence, see "Criminal Law," § 698.  
 Offer of proof, see "Criminal Law," § 670.  
 Order of proof, see "Criminal Law," §§ 680-682, 686-689.  
 Presence of accused, see "Criminal Law," § 636.  
 Rebuttal, see "Criminal Law," §§ 683, 684.  
 Right to confront witnesses, see "Criminal Law," § 662.  
 Separation and exclusion of witnesses, see "Criminal Law," § 665.  
 Statement of accused, see "Criminal Law," § 668.  
 Withdrawal of evidence, see "Criminal Law," § 677.

*Use of dying declarations.*

Determination of question of admissibility, see ante, § 218.  
 Order of proof, see "Criminal Law," § 687.

(B) QUESTIONS FOR JURY.

*Cross-References.*

Competency of dying declarations, see ante, § 218.  
 Effect of dying declaration, see ante, § 221.  
 Province of court and jury in general, see "Criminal Law," §§ 731-768.

§§ 268, 269. (See Analysis.)

§ 270. Insanity or intoxication.

*Cross-References.*

Admissibility of evidence, see ante, §§ 179, 180.  
 Insanity as defense to murder, see ante, § 27.  
 Intoxication as defense to murder, see ante, § 28.  
 Intoxication as excuse for homicide, see ante, § 101.  
 Intoxication as reducing grade to manslaughter, see ante, § 81.  
 Presumptions and burden of proof, see ante, § 151.  
 Sufficiency of evidence, see ante, § 237.  
 Expert and opinion evidence, see "Criminal Law," § 741.  
 Insanity in general, see "Criminal Law," § 740.

§ 271. Passion and provocation.

*Cross-References.*

Admissibility of evidence, see ante, § 181.  
 Passion as element of manslaughter, see ante, §§ 39, 40.  
 Provocation as element of manslaughter, see ante, §§ 42-51.

§§ 272-275. (See Analysis.)

§ 276. Self-defense.

*Cross-References.*

Admissibility of evidence, see ante, §§ 187-195.  
 As excuse for homicide, see ante, §§ 109-121.  
 Instructions, see post, § 300.  
 Presumptions, see ante, § 151.

§§ 277-280. (See Analysis.)

§ 281. Principals and accessories.

*Cross-References.*

Liability for assault with intent to kill, see ante, § 100.  
 Liability for manslaughter, see ante, § 83.  
 Liability for murder, see ante, § 80.  
 Sufficiency of evidence, see ante, § 249.  
 Variance, see ante, § 142.  
 Uncontroverted evidence, see "Criminal Law," § 744.

§ 282. Grade or degree of offense.

*Cross-References.*

Admissibility of evidence, see ante, § 199.  
 Allegations in indictment as to degrees, see ante, § 139.  
 Elements of degrees of manslaughter, see ante, §§ 77-79.  
 Elements of degrees of murder, see ante, §§ 21-24.  
 Presumptions, see ante, § 152.

§ 282½. Extent of punishment.

*Cross-Reference.*

Right to jury trial, see "Jury," § 24.

## (C) INSTRUCTIONS.

*Cross-References.*

Harmless error in failure or refusal to give instructions, see post, § 341.  
 Harmless error in giving instructions, see post, § 340.  
 Review as dependent on objections or exceptions in lower court, see post, § 325.  
 Abstract instructions, see "Criminal Law," § 813.  
 Acts and declarations of conspirators and codefendants, see "Criminal Law," § 779.  
 Admissions and confessions, see "Criminal Law," § 781.  
 Alibi, see "Criminal Law," § 775.  
 Appeals to sympathy and prejudice, see "Criminal Law," § 812.  
 Applicability to case, see "Criminal Law," § 814.  
 Argumentative instructions, in general, see "Criminal Law," § 807.  
 Character, see "Criminal Law," § 776.  
 Circumstantial evidence, see "Criminal Law," § 784.  
 Confused or misleading instructions, in general, see "Criminal Law," § 809.  
 Construction and effect of charge as a whole, see "Criminal Law," § 822.  
 Construction in general, see "Criminal Law," § 820.  
 Contradictory instructions, see "Criminal Law," § 810.  
 Credibility of testimony or statement of accused, see "Criminal Law," § 786.  
 Credibility of witnesses, see "Criminal Law," § 783.  
 Curing omissions, see "Criminal Law," § 818.  
 Definition and explanation of terms, see "Criminal Law," § 800.  
 Doubts of individual jurors, see "Criminal Law," § 798.  
 Error cured by withdrawal or giving other instructions, see "Criminal Law," § 823.  
 Excluding evidence from consideration, see "Criminal Law," § 783½.  
 Failure to call witness, or produce evidence, see "Criminal Law," § 788.  
 Form and language in general, see "Criminal Law," § 805.  
 Form of verdict, see "Criminal Law," § 798½.  
 Inadvertent errors and omissions, see "Criminal Law," § 821.  
 Influence of arguments of counsel, see "Criminal Law," § 799.  
 Instructions excluding or ignoring issues, defenses, or evidence, in general, see "Criminal Law," § 815.  
 Instructions infringing right to jury trial, see "Jury," § 34.  
 Matters of law, see "Criminal Law," §§ 790, 791.  
 Objections and exceptions, see "Criminal Law," §§ 838-847.  
 Oral instructions, see "Criminal Law," § 804.  
 Powers of recommendation to mercy, see "Criminal Law," § 797.

Presumptions and burden of proof, see "Criminal Law," § 778.  
 Reading authorities, see "Criminal Law," § 808.  
 Reasonable doubt, see "Criminal Law," § 789.  
 Repetition, see "Criminal Law," § 806.  
 Requests for instructions, see "Criminal Law," §§ 824-836.  
 Statement and review of evidence, see "Criminal Law," § 777½.  
 Sufficiency of evidence, see "Criminal Law," § 782.  
 Testimony of accomplices, see "Criminal Law," § 780.  
 Theory of case, see "Criminal Law," § 770.  
 Undue prominence of particular facts in general, see "Criminal Law," § 811.  
 Withdrawal of instructions, see "Criminal Law," § 819.

## § 283. Province of court and jury in general.

*Cross-Reference.*

In general, see "Criminal Law," §§ 755-768.

## § 284. Corpus delicti.

*Cross-References.*

Admissibility of evidence, see ante, § 153.  
 Presumption and burden of proof, see ante, § 143.  
 Sufficiency of evidence, see ante, § 228.

## § 285. Elements of offense in general.

*Cross-References.*

Presumption and burden of proof, see ante, § 144.  
 Offenses included in charge, see "Criminal Law," § 795.

## § 286. Intent, malice, deliberation, and premeditation.

*Cross-References.*

Construction of charge as a whole, see "Criminal Law," § 822.  
 Contradictory instructions, see "Criminal Law," § 810.  
 Error cured by giving other instructions, see "Criminal Law," § 823.  
 Inadvertent errors, see "Criminal Law," § 821.  
 Invasion of province of jury, see "Criminal Law," § 759.  
 Presumptions and burden of proof, see "Criminal Law," § 778.  
 Requests for instructions, see "Criminal Law," §§ 824, 829.

*Annotation.*

"Malice aforethought" in the definition of murder; what the term now means, and how the courts should deal with it in charging the jury.—38 L. R. A. (N. S.) 1054, note.

§§ 287, 288. (See Analysis.)

§ 289. Commission of or attempt to commit other offense.



**Annotation.**

The instructions on trial for homicide in the commission of unlawful acts not felonies.—63 L. R. A. 401, note.

**§ 290. Nature of means or instrument used.****§ 291. Cause of death.****Cross-Reference.**

Requests, see "Criminal Law," § 829.

**§ 292. Elements of assault with intent to kill.****Cross-Reference.**

Offenses included in charge, see "Criminal Law," § 795.

**§ 293. Matters of defense in general.****Cross-Reference.**

Requests, see "Criminal Law," §§ 824, 829.

**§ 294. Insanity or intoxication.****Cross-References.**

As to presumptions and burden of proof, see "Criminal Law," § 778.

Contradictory instructions, see "Criminal Law," § 810.

Insanity in general, see "Criminal Law," § 773.

Instructions on weight of evidence, see "Criminal Law," §§ 763, 764.

Requests, see "Criminal Law," § 829.

**§ 295. Passion and provocation.****Cross-Reference.**

Requests, see "Criminal Law," § 824.

**§§ 296-299. (See Analysis.)****§ 300. Self-defense.****Cross-References.**

Assumption of facts, see "Criminal Law," § 761.

As to weight and sufficiency of evidence, see "Criminal Law," § 782.

Construction of charge as a whole, see "Criminal Law," § 822.

Definition of justifiable, see "Criminal Law," § 800.

Error cured by withdrawal or giving other instructions, see "Criminal Law," § 823.

Instructions on weight of evidence, see "Criminal Law," §§ 763, 764.

Presumptions and burden of proof, see "Criminal Law," § 778.

Requests, see "Criminal Law," §§ 824-826, 829.

**§ 301. Defense of another.****§ 302. Defense of habitation.****Annotation.**

Necessity of instructing as to homicide in defense of dwelling.—2 L. R. A. (N. S.) 73, note.

**§§ 303, 304. (See Analysis.)****§ 305. Principals and accessories.****Cross-References.**

Inadvertent errors, see "Criminal Law," § 821.

Requests, see "Criminal Law," § 829.

**§§ 306-310. Grade or degree of offense.****Cross-References.**

Construction of charge as a whole, see "Criminal Law," § 822.

Exceptions, see "Criminal Law," § 844.

Inadvertent errors, see "Criminal Law," § 821.

Requests, see "Criminal Law," §§ 824, 829.

Undue prominence of particular matters, see "Criminal Law," § 811.

**Annotation.**

Submission of question of lower degree to jury in prosecution for homicide.—21 L. R. A. (N. S.) 18, note.

**§ 311. Punishment.****(D) VERDICT.****Cross-References.**

Assent of required number of jurors, see "Criminal Law," § 872½.

Concurrence of less than 12 jurors as denial of constitutional right to trial by jury, see "Jury," § 32.

Irregularities in ground for new trial in general, see "Criminal Law," § 933.

Polling jurors, see "Criminal Law," § 874.

Presence of accused, see "Criminal Law," § 636.

Reception of verdict on Sunday, see "Sunday," § 30.

Rendition and reception, see "Criminal Law," § 872.

Verdicts in general, see "Criminal Law," §§ 870-894.

**§ 312. Form and requisites in general.**

(a) Where defendant was indicted for murder and convicted of manslaughter, the verdict for the latter offense is insufficient unless it negatives the murder.—*Weighorst v. State*, 7 Md. 442. [Cited and annotated in 21 L. R. A. (N. S.) 4, 21, on conviction of lower or different degree in prosecution for homicide.]

(b) Under act 1809, c. 138, defining the various degrees of the offense of homicide, a verdict of guilty of murder in the second degree is sufficient, under an indictment of murder, without expressly finding defendant not guilty of the other degrees of the offense.—*Weighorst v. State*, 7 Md. 442. (See Code [vol. 3], art. 27, §§ 362-369.) [Cited and annotated, see *supra*.]

(c) A. was indicted for murder. The verdict rendered was, "Guilty of manslaughter." *Held*, that, unless the verdict find the de-

fendant not guilty of the higher offense, it is error to find him guilty of the lower.—*State v. Flannigan*, 6 Md. 167.

(d) Where an issue is joined on a single count in an indictment, involving different grades of homicide, a conviction of murder in the second degree, or of manslaughter, implies a finding of not guilty of the higher offense.—*State v. Flannigan*, 6 Md. 167.

### § 313. Specification of grade or degree of offense.

See ante, § 312.

#### Cross-References.

Res gestæ, see "Criminal Law," § 363.

#### Annotation.

Conviction of lower or different degree in prosecution for homicide.—21 L. R. A. (N. S.) 1, note.

(a) Where the jurors, when polled, do not each of them state the degree of murder of which they find defendant guilty, the verdict is void.—*Ford v. State*, 12 Md. 514. [Cited and annotated in 23 L. R. A. 734, on correction of verdict in criminal cases; in 43 L. R. A. 78, on number and agreement of jurors necessary to valid verdict.] *Williams v. State*, 60 Md. 402.

### § 314. Assessment of punishment.

#### Cross-References.

Recommendation to mercy, see "Criminal Law," § 885.

Agreement as to punishment, see "Criminal Law," § 884.

### § 315. Construction and operation.

## IX. NEW TRIAL.

#### Cross-References.

Harmless error, in granting or refusing, see "Criminal Law," § 1172.

New trial in homicide case in general, see "Criminal Law," §§ 905-976.

### §§ 316-321. (See Analysis.)

## X. APPEAL AND ERROR.

#### Cross-References.

Amendments on appeal, see "Criminal Law," § 1139.

Assignment of errors, see "Criminal Law," § 1129.

Estoppel to allege error, see "Criminal Law," § 1137.

Grounds for dismissal of appeal, see "Criminal Law," § 1131.

Reinstatement of appeals, see "Criminal Law," § 1131.

Subsequent appeals, see "Criminal Law," § 1180.

### § 322. Appellate jurisdiction.

#### Cross-References.

As dependent on nature or grade of offense, see "Criminal Law," § 1019.

Review by United States Supreme Court of conviction in federal courts, see "Courts," § 385.

Successive appeals or other proceedings, see "Criminal Law," § 1014.

### § 323. Decisions reviewable.

### § 324. Right of review.

#### Cross-Reference.

Right of prosecution to review, see "Criminal Law," § 1024.

### § 325. Presentation and reservation in lower court of grounds of review.

#### Cross-Reference.

Exceptions in general, see "Criminal Law," §§ 1048-1058.

### § 326. Proceedings for transfer of cause and effect thereof.

#### Cross-References.

Certificate of probable cause, see "Criminal Law," § 1073.

Proceedings for appeal in forma pauperis, see "Criminal Law," § 1077.

### §§ 327-332. (See Analysis.)

### §§ 333-343. Harmless error.

#### Cross-References.

Argument and conduct of counsel, see "Criminal Law," § 1171.

Examination of witnesses, see "Criminal Law," § 1170½.

Harmless error in general, see "Criminal Law," § 1170½.

Harmless error in order directing removal of defendant to other place of confinement, see "Criminal Law," § 1165.

Harmless error in submission of voluntary character of confessions to jury, see "Criminal Law," § 1165.

Impaneling jury in general, see "Criminal Law," § 1166½.

#### Admission of evidence.

Curing error by facts admitted by defendant, see "Criminal Law," § 1169.

Harmless error in admission of admissions of accomplices and codefendants, see "Criminal Law," § 1169.

Harmless error in admission of declarations of accused, see "Criminal Law," § 1169.

Harmless error in admission of evidence of other offenses, see "Criminal Law," § 1169.

Harmless error in admission of opinion evidence, see "Criminal Law," § 1169.

(a) In a prosecution for homicide, the admission of certain conjectural evidence held

prejudicial error.—*Cross v. State*, 118 Md. 660, 86 Atl. 228.

§§ 344-349. (See Analysis.)

## **XI. SENTENCE AND PUNISHMENT.**

### *Cross-References.*

- Commission of homicide by Indian, see "Indians," § 38.
- Fixing date of execution of sentence after date originally fixed, see "Criminal Law," § 1003.
- Inquisition of lunacy after conviction, see "Criminal Law," § 981.
- Presence of accused at rendition of sentence, see "Criminal Law," § 987.
- Proceedings to assess punishment on plea of guilty, see "Criminal Law," § 980.
- Punishment of slaves, see "Criminal Law," § 13.
- Sentence in general, see "Criminal Law," § 977.
- Sentence to death of convict serving life sentence for homicide on conviction of other homicide, see "Convicts," § 5.
- Writ of error coram nobis, see "Criminal Law," § 997.

§ 350. Power and duty of court in general.

• § 351. Constitutional and statutory provisions.

### *Cross-References.*

- Class legislation, see "Constitutional Law," § 208.
- Ex post facto laws, see "Constitutional Law," § 203.
- Judicial authority and duty to construe laws, see "Statutes," § 176.

§ 352. Form and requisites of sentence.

### *Cross-References.*

- Conformity of sentence to verdict, see "Criminal Law," § 992.
- Successive terms of imprisonment, see "Criminal Law," § 995.

§ 353. Entry and record of judgment.

### *Cross-References.*

- Description of offense in judgment record, see "Criminal Law," § 95.
- Entry nunc pro tunc, see "Criminal Law," § 994.
- Form and requisites of judgment record, see "Criminal Law," § 995.

§ 354. Nature and extent of punishment.

### *Cross-References.*

- Cruel and unusual punishment, see "Criminal Law," § 1213.
- Due process of law, see "Constitutional Law," § 272.
- Punishment of attempts, see "Criminal Law," § 1208.
- Term of imprisonment in general, see "Criminal Law," § 1216.

### *Annotation.*

Cruel and unusual punishment for homicide.—35 L. R. A. 575, note.

(a) Murder is a felony, within the meaning of act 1793, c. 57, § 13, providing that, on conviction of "any felony with or without benefit of clergy," the convict shall be sentenced to labor 14 years on the public roads.—*State v. Ben*, 1 H. & J. 99. (See Code [vol. 3], art. 27, § 507.)

## **HOMOLOGATION.\***

### *Cross-References.*

- Of account of assignee or trustee in insolvency, see "Insolvency," § 134.
- Of account of executors and administrators, see "Executors and Administrators," §§ 504, 508, 512-515.
- Of account of trustee in bankruptcy, see "Guardian and Ward," §§ 155-165.
- Of account of trustee in bankruptcy, see "Bankruptcy," § 370.
- Of acts or contracts of receivers, see "Receivers," § 115.
- Of appointment of school teacher, see "Schools and School Districts," § 133.
- Of assessments for public improvements, see "Drains," § 81; "Municipal Corporations," §§ 493, 497-510.
- Of award of arbitrators, see "Arbitration and Award," § 72.
- Of award or report of commissioners, appraisers or viewers in condemnation proceedings, see "Eminent Domain," § 237.
- Of composition in bankruptcy, see "Bankruptcy," §§ 384, 385.
- Of composition in insolvency, see "Insolvency," § 140.
- Of conveyance of trust property, see "Trusts," § 200.
- Of defective deed, see "Deeds," § 51.
- Of defective mortgage, see "Mortgages," § 64.
- Of disputed marriage, see "Marriage," § 55.
- Of execution sale, see "Execution," § 242.
- Of finding in inquisition of lunacy, see "Insane Persons," § 23.
- Of grants of public lands, see "Public Lands," §§ 208, 211, 222.
- Of judicial sales in general, see "Judicial Sales," § 31.
- Of partition sale, see "Partition," § 106.
- Of receiver's sale, see "Receivers," § 137.
- Of report of commissioners or viewers in highway proceedings, see "Highways," § 41.
- Of report on reference, see "Equity," § 413; "Reference," § 102.
- Of sale by executor under power in will, see "Executors and Administrators," § 138.
- Of sale of attached property, see "Attachment," § 200.
- Of sale of bankrupt's property, see "Bankruptcy," § 264.

\*Annotation: Words and Phrases, same title.

Of sale of land to enforce assessment for public improvements, see "Municipal Corporations," § 578.  
 Of sale of property of decedent, see "Executors and Administrators," § 375.  
 Of sale of property of infant, see "Guardian and Ward," § 103.  
 Of sale on foreclosure of mortgage, see "Mortgages," §§ 367, 526.  
 Of sale to enforce mechanic's lien, see "Mechanics' Liens," § 297.  
 Of tax sale, see "Taxation," § 685.  
 Of tax title, see "Taxation," §§ 790-818.  
 Of title, see "Quieting Title."  
 Of title to lands granted by colonial governments or proprietors, see "Public Lands," § 195.

### **HONESTY.\***

#### *Cross-Reference.*

Of witness affecting credibility, see "Witnesses," §§ 333-362.

### **HONOR.\***

#### *Cross-Reference.*

Acceptance and payment of bills, notes, and checks in general, see "Bills and Notes," §§ 66-89.

### **HONORARIUM.\***

#### *Cross-Reference.*

Compensation of attorney or counsel, see "Attorney and Client," §§ 130-192.

### **HORSE RACING.\***

#### *Cross-References.*

See "Gaming," §§ 6-8, 73.  
 At fairs, see "Agriculture," § 5.

### **HORSE RAILROADS.\***

#### *Cross-Reference.*

See "Street Railroads."

### **HORSES.\***

#### *Cross-References.*

See "Animals"; "Livery Stable Keepers."  
 Assault by driving horse against the person of another, see "Assault and Battery," §§ 13, 48, 51.  
 Carriage, see "Carriers," §§ 203-231.  
 Exchange, see "Exchange of Property," §§ 9-14.  
 Frightening and runaways, see "Highways," §§ 180, 181; "Municipal Corporations," § 705; "Railroads," §§ 305, 360, 405-452.  
 Hiring, see "Bailment."  
 Liability for injuries to hired horses, see "Bailment," § 14.  
 On highways, in general, see "Highways," §§ 170, 172-181.

### **HORSE-SHOERS.\***

#### *Cross-References.*

Liability for cruelly beating horse, see "Animals," § 44.  
 License taxes, see "Licenses," § 13.

### **HORSE THEFT.\***

#### *Cross-Reference.*

See "Larceny," § 30.

### **HORSE TRAINERS.**

#### *Cross-Reference.*

Attachment in possession of trainer as bailee, see "Bailment," § 20.

### **HORTICULTURE.**

#### *Cross-Reference.*

See "Agriculture."

## **HOSPITALS.\***

### *Scope-Note.*

[INCLUDES institutions for cure of persons sick, wounded, insane, or otherwise afflicted, whether founded or maintained by private means, or in part or wholly by government; establishment, maintenance, regulation, and management of such institutions; and rights, duties, powers, and liabilities of managers and other officers, etc., thereof.

[EXCLUDES powers of incorporated cities, towns, etc., in respect of establishment, maintenance, etc., of hospitals (see "Municipal Corporations"); and hospitals regarded as charitable institutions (see "Charities").

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Establishment and maintenance of private hospitals.
- § 2. Establishment and maintenance of public hospitals.

\*Annotation: Words and Phrases, same title.

- § 3. Regulation and supervision.
- § 4. Officers.
- § 5. Inmates.
- § 6. Management of institution.
- § 7. Liabilities of proprietors, officers, and employees.
- § 8. Actions.

*Cross-References.*

See "Asylums."

As nuisance, see "Nuisance," § 3.  
 Condemnation of land for, as taking for public use, see "Eminent Domain," § 18.  
 Conveyance of land by municipality for purposes of hospital, see "Municipal Corporations," § 222.  
 Delegation to city of power of state to establish hospital, see "Municipal Corporations," § 590.  
 Disposition of person on habeas corpus, see "Habeas Corpus," § 111.  
 Establishment of pesthouses, see "Health," § 23.  
 Exemption from assessments for municipal improvements, see "Municipal Corporations," § 434.  
 Exemption from taxation, see "Taxation," § 241.  
 Hospital charges as element of damage for personal injuries, see "Damages," § 43.  
 Liability of charitable hospitals for injuries to patients, see "Charities," § 45.  
 Liability of city for damage caused by location of hospital, see "Municipal Corporations," § 734.  
 Liability of city for injuries to patient in municipal hospital, see "Municipal Corporations," § 734.  
 Liability of city for rental value of house appropriated as hospital, see "Municipal Corporations," § 249.  
 Liability of hospital for causing death, see "Death," § 14.  
 Liability of master for destruction of remains of deceased servant by hospital authorities, see "Master and Servant," § 92.

§§ 1-5. (See Analysis.)

**§ 6. Management of institution.**

(a) A contract by the Maryland Hospital to take care of a lunatic patient for life for a fixed sum paid in ultra vires and void, where there was no special provision in the charter granting authority to make it.—*Maryland Hospital v. Foreman*, 29 Md. 524. [Cited and annotated in 20 L. R. A. 771, on estoppel of corporation to set up ultra vires.]  
 §§ 7, 8. (See Analysis.)

**HOSTILE POSSESSION.\***

*Cross-Reference.*

Element of adverse possession, see "Adverse Possession," §§ 58-85, 115, 116.

\*Annotation: Words and Phrases, same title.

Liability of railroad company as member of association operating hospital, see "Associations," § 16.  
 Locating hospital near property as taking without compensation, see "Eminent Domain," § 2.  
 Power of city to acquire land for hospital purposes, see "Municipal Corporations," § 223.  
 Powers of county board in respect to public dispensary, see "Counties," § 47.  
 Power of county to acquire land for erection of hospital, see "Counties," § 103.  
 Power of county to erect hospital, see "Counties," § 105.  
 Public aid as an appropriation for religious purposes, see "Religious Societies," § 6.  
 Records as evidence, see "Evidence," § 351.  
 Records as evidence in criminal prosecutions, see "Criminal Law," § 429.  
 Records as evidence of death, see "Death," § 4.  
 Removal of injured person to hospital as false imprisonment, see "False Imprisonment," § 5.  
 Right of action against county for failure to establish hospital, see "Counties," § 210.  
 Right of injured servant to treatment in master's hospital, see "Master and Servant," § 77.  
 Right of state hospital to apply for sale of decedent's real estate, see "Executors and Administrators," § 328.  
 Special nature of regulation, see "Statutes," § 77.  
 Subject and title of acts, see "Statutes," § 110½.

**HOSTILE WITNESS.**

*Cross-Reference.*

Examination, see "Witnesses," § 244.

**HOSTILITIES.**

*Cross-References.*

See "War."

Violation of neutrality laws, see "Neutrality Laws."

**HOTCHPOT.\***

*Cross-Reference.*

Bringing advancements into hotchpot, see "Descent and Distribution," §§ 109-111.

**HOTELS.\****Cross-References.*

See "Innkeepers."  
 As bailee of baggage, see "Bailment," § 5.  
 Assault on guest by hotel manager, see "Assault and Battery," § 9.  
 Liability for violation of pure food laws, see "Food," §§ 14, 15.  
 Registers as evidence, see "Evidence," § 351.

**HOT SPRINGS RESERVATION.***Cross-Reference.*

See "Public Lands," § 49.

**HOURS.\****Cross-Reference.*

Computation of time, see "Time," § 14.

**HOURS OF LABOR.***Cross-References.*

Of laborers employed on public work, see "Municipal Corporations," § 283.  
 Regulation of hours of work, see "Master and Servant," § 13.  
 Stipulations affecting validity of contract for public improvements, see "Municipal Corporations," § 339.  
 Validity of restriction in respect to laborers engaged on public work, see "Municipal Corporations," § 330.

**HOUSE.\****Cross-References.*

See "Domicile"; "Homestead."  
 As synonym of tenement, see "Arson," § 20.  
 Burning, see "Arson."  
 Disorderly, see "Disorderly House."  
 Larceny from, see "Larceny," § 21.

**HOUSE BOATS.\****Cross-Reference.*

License taxes, see "Licenses," § 17.

**HOUSEBREAKING.\****Cross-Reference.*

See "Burglary."

**HOUSE BURNING.***Cross-Reference.*

See "Arson."

**HOUSEHOLDERS.\****Cross-References.*

Exemption of goods from taxation, see "Taxation," § 224.  
 Exemption of property from legal process for debts, see "Exemptions," § 17;  
 "Homestead," § 19.

Failure of attachment bond to show that sureties are householders, see "Attachment," § 232.

Persons entitled to exemptions, see "Bankruptcy," § 395.

Qualifications of jurors, see "Grand Jury," § 5; "Jury," § 50.

**HOUSEHOLD EXPENSES.***Cross-Reference.*

Allowance to family of decedent, see "Executors and Administrators," § 194.

**HOUSEHOLD GOODS.\****Cross-References.*

Exemption from legal process for debts of owner, see "Exemptions," § 42.

Exemption from taxation, see "Taxation," § 224.

Mortgage of, see "Chattel Mortgages," § 119.

**HOUSEKEEPER.\****Cross-References.*

Right to exemptions, see "Exemptions," § 18; "Homestead," § 20.

**HOUSE OF CORRECTION.\****Cross-Reference.*

See "Reformatories."

**HOUSE OF ENTERTAINMENT.\****Cross-Reference.*

See "Innkeepers."

**HOUSE OF ILL FAME.\****Cross-Reference.*

See "Disorderly House."

**HOUSE OF REFUGE.***Cross-Reference.*

See "Reformatories."

**HUMAN BEING.\****Cross-Reference.*

Necessity of allegation in indictment for homicide as to deceased being a human being, see "Homicide," § 131.

**HUMANE SOCIETIES.***Cross-Reference.*

For prevention of cruelty to animals, see "Animals," § 39.

**HUMANITARIAN DOCTRINE.\****Cross-References.*

Injury avoidable notwithstanding contributory negligence, see "Carriers," § 340;  
 "Master and Servant," § 248; "Negligence," § 83; "Railroads," §§ 278, 338, 390, 426; "Street Railroads," § 103.

\*Annotation: Words and Phrases, same title.

**HUNG JURY.***Cross-Reference.*

Effect on right of accused to discharge for delay in prosecution, see "Criminal Law," § 576.

**HUNTING.\****Cross-Reference.*

Regulation of hunting of game, see "Game."

**HUSBAND AND WIFE.\****Scope-Note.*

[INCLUDES the marital relation; rights, powers, duties, and liabilities of married persons, as between themselves and as to others, incident to the existence of the relation or arising from conveyances or agreements in consideration or in consequence of marriage; disabilities and privileges of married women by reason of their coverture, and protection of their persons and property; and legal proceedings affecting husbands and wives and their property.

[EXCLUDES contracts to marry (see "*Breach of Marriage Promise*"); contracts to procure marriage or in restraint of marriage (see "*Contracts*"); marriage and annulment thereof (see "*Marriage*"); divorce and judicial separation (see "*Divorce*"); rights of dower (see "*Dower*"); curtesy (see "*Curtesy*"); and homestead (see "*Homestead*"); testamentary capacity of married women (see "*Wills*"); competency of husband and wife as witnesses for or against each other (see "*Witnesses*"); and offenses of adultery (see "*Adultery*"); and bigamy (see "*Bigamy*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Mutual Rights, Duties, and Liabilities.**

- § 1. The relation in general.
- § 2. What law governs.
- § 3. Personal rights and duties.
- § 4. Support of family.
- § 5. Services and earnings of wife.
- § 6. Property of husband.
- § 7. Property of wife.
- § 8. — In general.
- § 9. — Real property.
- § 10. — Personal property.
- § 11. — Reduction to possession by husband.
- § 12. — Wife's equity to a settlement.
- § 13. — Rights of husband's creditors.
- § 14. Conveyances to husband and wife.
- § 15. Conveyances by husband and wife.
- § 16. Possession between husband and wife.
- § 17. Contracts with third persons in general.
- § 18. Antenuptial debts of wife.
- § 19. Necessaries and family expenses.
- § 20. Agency of wife for husband.
- § 21. — In general.
- § 22. — Property of husband.
- § 23. — Contracts.

\*Annotation: Words and Phrases, same title.

**I. Mutual Rights, Duties, and Liabilities—Continued.**

- § 23½.— Ratification or repudiation of agency.
- § 23¾.— Evidence of agency.
- § 25. Agency of husband for wife.

**II. Marriage Settlements.**

- § 26. Nature in general.
- § 27. Statutory provisions.
- § 28. Requisites and validity.
- § 29. — Antenuptial settlements.
- § 30. — Postnuptial settlements.
- § 31. Construction and operation.
- § 32. Subsequent misconduct of husband or wife.
- § 32½. Modification.
- § 33. Revocation or extinguishment.
- § 34. Evidence.
- § 35. Enforcement.

**III. Conveyances, Contracts, and Other Transactions Between Husband and Wife.**

- § 36. Validity of transactions in general.
- § 36½. What law governs.
- § 37. Statutory provisions.
- § 38. Contracts and debts existing at time of marriage.
- § 39. Express contracts.
- § 40. Implied contracts.
- § 41. Services.
- § 42. Partnership.
- § 43. Loans and advances.
- § 44. Bills and notes.
- § 45. Sales and transfers of personal property.
- § 46. Contracts for conveyance of real property.
- § 47. Conveyances by husband to or for wife.
- § 48. Conveyances by wife to or for husband.
- § 49. Gifts.
- § 49½.— Gifts by husband to or for wife.
- § 49¾.— Gifts by wife to or for husband.
- § 50. Confessions of judgment.
- § 51. Releases.
- § 52. Rescission or avoidance.
- § 53. Torts.
- § 54. Crimes.

**IV. Disabilities and Privileges of Coverture.****(A) IN GENERAL.**

- § 55. Status of married women in general.
- § 56. What law governs.
- § 57. Constitutional and statutory provisions.
- § 58. Capacity to appoint agent, attorney, or trustee.
- § 59. Capacity to act as agent or trustee.
- § 60. Submission to arbitration.



**IV. Disabilities and Privileges of Coverture—Continued.****(A) IN GENERAL—Continued.**

- § 61. Confession of judgment.
- § 62. Estoppel.
- § 64. Eligibility for office or public employment.
- § 65. Effect of incapacity or absence of husband or separation.
- § 66. Removal of disabilities.
- § 67. Effect of termination of coverture.

**(B) PROPERTY AND CONVEYANCES.**

- § 68. Capacity to take and hold property.
- § 69. Capacity to convey.
- § 69½. Adverse possession.
- § 70. Requisites and validity of conveyances.
- § 71. Trusts.
- § 72. Gifts.
- § 73. Ratification.
- § 74. Avoidance.
- § 75. Jurisdiction of courts.
- § 76. — In equity.

**(C) CONTRACTS.**

- § 78. Contracts before marriage.
- § 79. Capacity to contract.
- § 80. Requisites and validity of contracts in general.
- § 81. Instruments under seal.
- § 82. Services.
- § 83. Necessaries.
- § 84. Loans and advances.
- § 85. Bills and notes.
- § 86. Purchases and sales.
- § 87. Guaranty or suretyship.
- § 88. Releases.
- § 89. Ratification.
- § 90. Avoidance.

**(D) TRADE OR BUSINESS.**

- § 91. Capacity to trade.
- § 92. Statutory provisions.
- § 93. Abandonment by husband or separation.
- § 94. Consent of husband.
- § 95. Proceedings to become sole trader.
- § 96. Rights and powers of sole traders.
- § 97. Married women as partners.
- § 98. Married women as members of corporations or joint-stock companies.
- § 99. Rights and liabilities of husband of sole trader.
- § 100. Rights and remedies of creditors of sole trader.

**(E) TORTS.**

- § 101. Torts committed before marriage.
- § 102. Torts during coverture in general.
- § 103. Coercion of husband.
- § 104. Acts or omissions of agent.

**IV. Disabilities and Privileges of Coverture—Continued.****(E) TORTS—Continued.**

§ 105. Torts connected with invalid contracts.

**(F) CRIMES.**

§ 107. Crimes during coverture in general.

§ 108. Coercion of husband.

**V. Wife's Separate Estate.****(A) WHAT CONSTITUTES.**

§ 110. Nature of equitable or statutory estate.

§ 110½. What law governs.

§ 111. Married women's property acts.

§ 112. — Constitutionality.

§ 113. — Construction and operation in general.

§ 114. — Retroactive operation.

§ 115. Property of wife at time of marriage.

§ 116. Gifts to wife.

§ 117. Property devised or bequeathed to wife.

§ 118. Property inherited by wife.

§ 119. Property conveyed to or for use of wife.

§ 120. Property acquired by husband in trust for wife.

§ 121. Property purchased with wife's money.

§ 122. Property purchased by wife.

§ 124. Proceeds of separate property.

§ 125. Rents and profits of separate property.

§ 126. Earnings of wife.

§ 127. Damages recovered by wife.

§ 128. Alimony granted to wife.

§ 129. Estoppel to claim property.

§ 130. Evidence as to ownership.

§ 131. — Presumptions and burden of proof.

§ 132. — Admissibility.

§ 133. — Weight and sufficiency.

§ 133½. Questions for jury as to ownership.

**(B) RIGHTS AND LIABILITIES OF HUSBAND.**

§ 134. Vested rights.

§ 135. Husband as trustee for wife.

§ 136. Right of possession or occupation.

§ 137. Power to manage or control.

§ 138. Authority as wife's agent or attorney.

§ 139. Right to proceeds of sales.

§ 140. Support of husband.

§ 141. Improvements by husband.

§ 142. Services of husband.

§ 143. Advances by husband.

§ 144. Accountability for property and income.

§ 145. Liability to wife for wrongful acts or neglect.

§ 146. Liabilities to third persons.

**(C) LIABILITIES AND CHARGES.**

§ 146½. What law governs.

§ 147. Property subject to liability.

**V. Wife's Separate Estate—Continued.****(C) LIABILITIES AND CHARGES—Continued.**

- § 148. Purchase money and prior incumbrances.
- § 149. Rights of husband's creditors.
- § 150. Improvements and materials furnished.
- § 151. Necessaries and family expenses.
- § 152. Contracts in general.
- § 153. Contracts between husband and wife.
- § 154. Contracts jointly with husband.
- § 155. Money lent to wife.
- § 156. Bills and notes.
- § 157. Guaranty and suretyship.
- § 158. — In general.
- § 159. — Debts of husband.
- § 160. Debts incurred in separate business.
- § 161. Debts contracted on credit of separate estate.
- § 162. Contracts for benefit of separate estate.
- § 163. Debts charged on separate estate.
- § 164. — Intent to charge.
- § 165. — What constitutes charge.
- § 166. — Joinder or assent of husband.
- § 167. — Debts of husband.
- § 168. Mortgage or pledge.
- § 169. — In general.
- § 171. — Debts of husband.
- § 172. — Debts of third persons.
- § 173. Confession of judgment.
- § 174. Torts.
- § 175. Enforcement.
- § 176. — In general.
- § 177. — After termination of coverture.
- § 178. — After death of wife.

**(D) CONVEYANCES AND CONTRACTS TO CONVEY.**

- § 179. Power of alienation in general.
- § 180. What law governs.
- § 181. Statutory provisions.
- § 182. Nature and essentials of transaction in general.
- § 183. Consideration.
- § 184. Consent of husband.
- § 185. Order of court.
- § 186. Contracts to convey.
- § 187. — Requisites and validity.
- § 188. — Construction and operation.
- § 189. — Enforcement.
- § 190. Conveyances in general.
- § 191. — Form and contents.
- § 192. — Execution by wife.
- § 193. — Joinder of husband.
- § 194. — Acknowledgment.
- § 194½. — Record.

**V. Wife's Separate Estate—Continued.****(D) CONVEYANCES AND CONTRACTS TO CONVEY—Continued.**

- § 195. — Construction and operation.
- § 196. Contracts and conveyances by agents or attorneys.
- § 197. Parol transfers.
- § 198. Estoppel to assert invalidity.
- § 199. Ratification.
- § 200. Effect of termination of coverture.
- § 201. Avoidance.
- § 202. Rights and liabilities of purchasers.

**VI. Actions.**

- § 203. Capacity to sue and be sued in general.
- § 203½. What law governs.
- § 204. Statutory provisions.
- § 205. Rights of action between husband and wife.
- § 206. Rights of action by husband or wife or both.
- § 207. — In general.
- § 208. — On contracts.
- § 209. — For torts.
- § 210. — In respect of wife's separate property.
- § 211. Rights of action against husband or wife or both.
- § 212. — In general.
- § 213. — On contracts.
- § 214. — For torts.
- § 215. — To charge wife's separate property.
- § 216. Defenses against husband or wife.
- § 217. Defenses by husband or wife.
- § 218. Jurisdiction.
- § 220. Time to sue and limitations.
- § 221. Parties.
- § 222. Joinder or intervention in actions by others.
- § 223. Termination of coverture pending action.
- § 224. Process.
- § 225. Appearance and representation of wife by attorney.
- § 228. Pleading.
- § 229. — In general.
- § 230. — Defense of coverture.
- § 231. Evidence.
- § 232. — In general.
- § 233. — Proof of marriage.
- § 235. Trial.
- § 237. Judgment.
- § 238. — In general.
- § 239. — Against wife personally.
- § 240. — Against wife's separate property.
- § 241. Execution.
- § 242. Enforcement of judgment against wife's separate property.
- § 243. Appeal and error.
- § 244. Costs.

**VII. Community Property.**

- § 246. What law governs.
- § 247. Statutory provisions.
- § 248. Existence of community.
- § 248½. Property acquired before marriage.
- § 249. Property acquired during marriage in general.
- § 250. Property acquired by gift.
- § 251. Property acquired by devise, bequest, or inheritance.
- § 252. Public lands acquired by grant or entry.
- § 253. Property purchased.
- § 254. — In general.
- § 255. — On consideration of security of separate property.
- § 256. — Necessity and effect of recitals in conveyances.
- § 257. Rents, profits, and products of separate property.
- § 258. Improvements on separate property.
- § 259. Earnings of husband or wife.
- § 260. Damages for injuries to husband or wife.
- § 261. Evidence as to character of property.
- § 262. — Presumptions and burden of proof.
- § 263. — Admissibility.
- § 264. — Weight and sufficiency.
- § 265. Rights of husband and wife during existence of community.
- § 266. Contracts, conveyances, and gifts between husband and wife.
- § 267. Sales, conveyances, and incumbrances.
- § 268. Community and separate debts.
- § 269. Rights and remedies of creditors during existence of community.
- § 270. Actions.
- § 271. Separation.
- § 272. Dissolution of community.
- § 273. Rights and liabilities of survivor.
- § 274. Rights and liabilities of heirs.
- § 275. Subsequent marriage of survivor.
- § 276. Administration.

**VIII. Separation and Separate Maintenance.**

- § 277. Separation agreements.
- § 278. — Requisites and validity.
- § 279. — Construction and operation.
- § 280. — Subsequent divorce.
- § 281. — Actions on agreements.
- § 282. Right to allowance for maintenance.
- § 283. — Of wife.
- § 284. — Of husband.
- § 285. Actions for separate maintenance.
- § 285½. — Right of action.
- § 286. — Nature and form.
- § 287. — Grounds.
- § 287½. — Conditions precedent.
- § 288. — Defenses.
- § 289. — Jurisdiction.

**VIII. Separation and Separate Maintenance—Continued.**

- § 290. — Process in general.
- § 291. — Arrest.
- § 292. — Attachment.
- § 293. — Injunction.
- § 293½. — Bond.
- § 294. — Receivers.
- § 295. — Temporary allowances and counsel fees.
- § 296. — Pleading.
- § 297. — Evidence.
- § 298. — Amount of award.
- § 298½. — Trial.
- § 298¾. — Disposition of property.
- § 299. — Judgment, and enforcement thereof.
- § 299½. — Custody of children.
- § 300. — Appeal and error.
- § 301. — Costs.

**IX. Abandonment.**

- § 302. Nature of offense.
- § 303. Statutory provisions.
- § 304. Acts or omissions constituting abandonment.
- § 305. Defenses.
- § 305½. Penalties and actions therefor.
- § 306. Summary proceedings.
- § 307. — In general.
- § 308. — Jurisdiction and venue.
- § 309. — Complaint.
- § 310. — Trial.
- § 312. Indictment or information.
- § 313. Evidence.
- § 314. Trial.
- § 315. Judgment or order.
- § 316. Enforcement of order for support.
- § 317. Security for support.
- § 318. — In general.
- § 319. — Liabilities on bonds or undertakings.
- § 320. Review of proceedings.
- § 321. Sentence and punishment.

**X. Enticing and Alienating.**

- § 322. Nature and form of remedy.
- § 323. Right of action.
- § 324. — By husband.
- § 325. — By wife.
- § 326. Defenses.
- § 327. Persons liable.
- § 329. Time to sue and limitations.
- § 330. Parties.
- § 332. Pleading.
- § 333. Evidence.

**X. Enticing and Alienating—Continued.**

- § 334. Damages.
- § 335. Trial.
- § 337. Judgment.

**XI. Criminal Conversation.**

- § 340. Nature and form of remedy.
- § 341. Right of action.
- § 342. Defenses.
- § 347. Pleading.
- § 348. Evidence.
- § 349. Damages.
- § 350. Trial.
- § 351. New trial.
- § 353. Appeal and error.
- § 354. Costs.

*Cross-References.*

- See "Bigamy"; "Curtesy"; "Divorce"; "Dower"; "Homestead"; "Marriage"; "Parent and Child."
- Abandonment, aided by verdict, see "Indictment and Information," § 202.
- Abandonment, application for new trial, see "Criminal Law," § 956.
- Abandonment, as affecting limitations against wife, see "Limitation of Actions," § 73.
- Abandonment, as affecting right of widow to allowance from husband's estate, see "Executors and Administrators," § 188.
- Abandonment, as vagrancy, see "Vagrancy," § 1.
- Abandonment, competency of wife as witness, see "Witnesses," § 61.
- Abandonment, costs in prosecutions therefor, see "Costs," §§ 284-325.
- Abandonment, duplicity in indictment, see "Indictment and Information," § 125.
- Abandonment, effect on wife's right to acquire legal settlement, see "Paupers," § 19.
- Abandonment, evidence at former trial as evidence in prosecution for nonsupport, see "Criminal Law," § 545.
- Abandonment, excessive fines, see "Criminal Law," § 1214.
- Abandonment, former jeopardy, see "Criminal Law," §§ 163, 180, 202.
- Abandonment, ground for divorce, see "Divorce," § 37.
- Abandonment, harmless error, see "Criminal Law," § 1172.
- Abandonment, hearsay evidence, see "Criminal Law," §§ 419, 420.
- Abandonment, laws providing for revival of suspended prosecution for seduction on abandonment of prosecutrix after marriage as denying right to speedy trial, see "Criminal Law," § 574.
- Abandonment, limitations, see "Criminal Law," § 149.
- Abandonment, necessity for instructions in general, see "Criminal Law," § 770.
- Abandonment, pleas, see "Criminal Law," § 295.
- Abandonment, pleas of former jeopardy, see "Criminal Law," § 292.
- Abandonment, preliminary warrant, see "Criminal Law," § 207.
- Abandonment, right to jury trial, see "Jury," §§ 14, 19.
- Abandonment, subject and title of acts relating to, see "Statutes," § 118.
- Acknowledgment of married women, authority of particular officer to take, see "Acknowledgment," § 16.
- Acknowledgment of married woman, conclusiveness of certificate, see "Acknowledgment," § 55.
- Acknowledgment of married woman, construction of certificate, see "Acknowledgment," § 49.
- Acknowledgment of married women, contents of certificate, see "Acknowledgment," § 37.
- Acknowledgment of married woman, curative statutes, see "Acknowledgment," § 47.
- Acknowledgment of married woman, defectively acknowledged conveyances, see "Acknowledgment," § 6.
- Acknowledgment of married woman, disqualification of officer to take and make examination, see "Acknowledgment," § 20.
- Acknowledgment of married woman, disqualification of stockholder to take and make examination of married women to mortgage in favor of corporation, see "Acknowledgment," § 20.
- Acknowledgment of married woman, effect of unacknowledged conveyance, see "Acknowledgment," § 5.
- Acknowledgment of married woman, errors and defects in certificate, see "Acknowledgment," §§ 41, 42.
- Acknowledgment of married woman, evidence of fact of acknowledgment, see "Acknowledgment," § 60.
- Acknowledgment of married woman, evidence to impeach or contradict certificate, see "Acknowledgment," § 62.

Acknowledgment of married woman, examination on taking acknowledgment of adoption papers, see "Adoption," § 8.

Acknowledgment of married woman, impeachment of certificate, see "Acknowledgment," §§ 56, 58.

Acknowledgment of married woman, mode of taking, see "Acknowledgment," § 25.

Acknowledgment of married woman, of deed of separate property, see "Acknowledgment," § 3.

Acknowledgment of married woman, power to waive incompetency of officer, see "Acknowledgment," § 15.

Acquirement of highway by prescription as against married woman, see "Highways," § 3.

Actions, by husband for mutilation of remains of deceased wife, see "Dead Bodies," § 9.

Actions, by United States for benefit of married Indian woman, see "Indians," § 6.

Actions, competency of husband or wife, as witnesses in actions inter se, see "Witnesses," § 59.

Actions for deceit, see "Fraud," § 29.

Actions for forcible entry and detainer, see "Forcible Entry and Detainer," § 9.

Actions for injuries by vicious dog, dismissal as to wife of owner, see "Animals," § 74.

Actions for wrongful attachment of exempt property, see "Exemptions," § 146.

Actions for wrongful sale of liquor to spouse, see "Intoxicating Liquors," § 297.

Actions, in justices' courts, see "Justices of the Peace," § 39.

Actions, intervention in will contest to protect dower right, see "Wills," § 268.

Actions, joinder of causes of action, see "Action," §§ 42, 50.

Actions, liability of husband or wife to garnishment for the other's debts, see "Garnishment," § 23.

Actions, married women as involuntary bankrupts, see "Bankruptcy," § 67.

Actions, married women as persons subject to arrest, see "Arrest," § 8.

Actions, necessity of joining husband in action by wife for illegal sale of liquor to husband, see "Intoxicating Liquors," § 305.

Actions, on bastardy bond after marriage of prosecutrix and defendant, see "Bastards," § 89.

Actions, remedies in cases of transfers fraudulent as to creditors or subsequent purchasers, see "Fraudulent Conveyances," §§ 205-328.

Actions, right of wife divorced a mensa et thoro to maintain action against husband, see "Divorce," § 314.

Actions, to enforce mechanic's lien, see "Mechanics' Liens," § 263.

Actions, to foreclose tax lien, see "Taxation," § 643.

Actions, to recover payment made by wife on husband's debt, see "Payment," § 85.

Acts and declarations of husband or wife as evidence of conspirator or codefendant admissible against other spouse, see "Criminal Law," §§ 422, 424.

Adultery, see "Adultery."

Adultery as ground for divorce, see "Divorce," § 26.

Adultery of husband or wife as provocation for homicide, see "Homicide," § 47.

Advancements to husband chargeable to wife, see "Descent and Distribution," § 105.

Adverse possession by married woman as affected by admissions of husband, see "Adverse Possession," § 50.

Agency of husband for third person in transactions with wife, see "Principal and Agent."

Agency of husband for wife, acts interrupting adverse possession, see "Adverse Possession," § 50.

Agency of husband for wife, acts rendering property subject to municipal taxation, see "Municipal Corporations," § 966.

Agency of husband for wife, admissibility of declarations of husband to prove agency, see "Principal and Agent," § 22.

Agency of husband for wife, admissions as to advancements, see "Descent and Distribution," § 111.

Agency of husband for wife, amendment showing agency on appeal from justice's court, see "Justices of the Peace," § 174.

Agency of husband for wife, as affecting competency of husband as witness for or against wife, see "Witnesses," § 56.

Agency of husband for wife, delivery of goods of wife to husband by carrier, see "Carriers," § 82.

Agency of husband for wife, employment of husband fraudulent as against creditors, see "Fraudulent Conveyances," § 104.

Agency of husband for wife, knowledge of husband as affecting bona fides of alleged preferential transfer to wife, see "Bankruptcy," § 166.

Agency of husband for wife, liability as undisclosed principal, see "Principal and Agent," §§ 145, 146.

Agency of husband for wife, negligence causing injury to third person, see "Negligence," § 54.

Agency of husband for wife, service of notice of public improvements, see "Municipal Corporations," § 294.

Agency of husband for wife, signing petition for municipal improvements, see "Municipal Corporations," § 292.

Agency of husband for wife, waiver of defects in tax bill, see "Taxation," § 555.

Agency of wife for husband, as affecting competency of wife as witness for or against husband, see "Witnesses," § 56.

Agency of wife for husband, authority to enter appearance, see "Appearance," § 3.

Agency of wife for husband, construction of power of attorney in general, see "Principal and Agent," § 103.

Agency of wife for husband, effect of statement of wife as to agency, see "Principal and Agent," § 22.

Agency of wife for husband, for purpose of receiving telegrams, see "Telegraphs and Telephones," § 37.

Agency of wife for husband, knowledge by wife of vicious propensities of animal, see "Animals," § 70.



- Agency of wife for husband, new promise within statute of limitations, see "Limitation of Actions," § 143.
- Agency of wife for husband, purchase of land at tax sale, see "Taxation."
- Aggregate of claims by wife for personal injuries and by husband for expenses incurred as test of appellate jurisdiction, see "Appeal and Error," § 61.
- Agreement of wife to assist husband in prosecution of suit as champertous, see "Champerty and Maintenance," § 4.
- Allegations as to ownership of property in prosecution for embezzlement, see "Embezzlement," § 30.
- Allegations as to ownership of property in prosecution for larceny, see "Larceny," § 32.
- Allowance to survivor from estate of decedent, see "Executors and Administrators," §§ 173-201.
- Antenuptial contracts to devise or bequeath, see "Wills," § 60.
- Authority of husband to place improvements on wife's lands as affecting right to mechanic's lien, see "Mechanics' Liens," § 71.
- Authorizing wife to prosecute or defend action in the name of her absent husband as depriving husband of property without due process of law, see "Constitutional Law," § 309.
- Capacity of married woman to contract for, or consent to, improvements on land, as affecting right to mechanic's lien, see "Mechanics' Liens," § 68.
- Communication of venereal disease as tort, see "Torts," § 7.
- Community property, actions, computation of period of limitations, see "Limitation of Actions," § 119.
- Community property, actions, construction of statutes of limitation, see "Limitation of Actions," § 6.
- Community property, actions, limitations, see "Limitation of Actions," §§ 49, 102, 103.
- Community property, actions, part payment tolling limitations, see "Limitation of Actions," § 155.
- Community property, actions, persons barred by limitations, see "Limitation of Actions," § 174.
- Community property, actions, quieting title, see "Quieting Title," § 6.
- Community property, actions, removal from state to federal court of proceeding to determine whether property is separate or community property, see "Removal of Causes," § 4.
- Community property, actions, time for suit to enforce mechanic's lien, see "Mechanics' Liens," § 260.
- Community property, actions, wife as necessary party in suit to enforce mechanic's lien, see "Mechanics' Liens," § 263.
- Community property, act providing for agreements between husband and wife as to community as repeal of act relating to construction of will, see "Wills," § 437.
- Community property, affidavits on application to vacate judgment against, see "Judgment," § 390.
- Community property, as assets of wife's estate, see "Executors and Administrators," § 38.
- Community property, as vested right, see "Constitutional Law," § 96.
- Community property, check by wife as equitable assignment of community money, see "Assignments," § 49.
- Community property, community funds expended in improvement of wife's separate estate, sale of improvements in bankruptcy, see "Bankruptcy," § 305.
- Community property, consideration affecting validity of conveyance by husband to wife, see "Fraudulent Conveyances," § 95.
- Community property, devise or bequest, see "Wills," § 577.
- Community property, dissolution, appellate jurisdiction as dependent on amount or value in controversy, see "Courts," § 224.
- Community property, dissolution, homestead rights on dissolution, see "Homestead," § 134.
- Community property, division on divorce, see "Divorce," §§ 249-255.
- Community property, effect of divorce on rights of parties, see "Divorce," § 322.
- Community property, forfeiture for non-payment of taxes, see "Taxation," § 851.
- Community property, fraudulent transfer by bankrupt, see "Bankruptcy," § 279.
- Community property, heirship, instructions as to limitations, see "Limitation of Actions," § 200.
- Community property, heirship, knowledge of cause of action as affecting limitations, see "Limitation of Actions," § 95.
- Community property, heirship, limitations, see "Limitation of Actions," §§ 196, 197.
- Community property, notice of application to vacate judgment against, see "Judgment," § 388.
- Community property, partition deed, see "Partition," § 8.
- Community property, presumptions as to laws of other states or territories, see "Evidence," § 80.
- Community property, privity of husband and wife as affecting conclusiveness of judgment, see "Judgment," § 693.
- Community property, property and rights vesting in trustee in bankruptcy, see "Bankruptcy," § 143.
- Community property, right to mechanic's liens on wife's separate property held by husband as community property, see "Mechanics' Liens," § 57.
- Community property, survivorship, limitations against claims of survivor, see "Limitation of Actions," § 49.
- Community property, survivorship, recital in subsequent conveyance of terms of former deed as notice of community rights, see "Vendor and Purchaser," § 230.
- Community property, testamentary disposition, see "Wills," § 6.
- Competency as witnesses for or against each other, see "Witnesses," §§ 52-55.
- Competency, as witness, of husband or wife of party or other person interested, see "Witnesses," § 106.

- Competency of evidence as to conversations between, see "Criminal Law," § 386.
- Competency of testimony as to transactions with deceased spouse as agent of survivor, see "Witnesses," § 154.
- Competency of wife as attesting witness to note of husband as bringing note within statute of limitations applicable to attested writings, see "Limitation of Actions," § 25.
- Competency to testify to transaction with person since deceased or incompetent where testimony of spouse is excluded, see "Witnesses," § 146.
- Conclusiveness, as against wife, of judgment against husband, see "Judgment," § 693.
- Consent of wife as defense to action by husband for trespass, see "Trespass," § 25.
- Consent of wife to transfer or incumbrance of exempt property, see "Exemptions," § 86; "Homestead," § 117.
- Conspiracy to prevent performance of marital duties, see "Conspiracy," § 3.
- Construction of decree vesting title to property in married woman, see "Equity," § 431.
- Contract with husband for transportation of wife, see "Carriers," § 258.
- Contributory negligence of husband imputed to wife, see "Negligence," § 89.
- Contributory negligence of wife as precluding recovery by husband for her injuries, see "Negligence," § 80.
- Conveyances by husband and wife, acknowledgment by attorney in fact of chattel mortgage by husband and wife, see "Acknowledgment," § 11.
- Conveyances by husband and wife, as color of title, see "Adverse Possession," § 81.
- Conveyances by husband and wife, conveyance by husband owning fee and wife holding ground rent as conveyance of ground rent, see "Ground Rent," § 3.
- Conveyances by husband and wife, parol agreement to convey homestead, see "Frauds, Statutes of."
- Conveyances by husband and wife, refusal of wife to join in conveyance, effect on right of broker to commissions, see "Brokers," § 61.
- Conveyances by husband or wife or both, conveyances by husband in fraud of wife's right as distributee of deceased husband's estate, see "Descent and Distribution," § 69.
- Conveyances by husband or wife or both, conveyance by husband in fraud of wife's right of dower, see "Dower," § 20.
- Conveyances by husband or wife or both, conveyance by husband in fraud of wife's right to alimony, see "Divorce," §§ 275, 276.
- Coverture as affecting eligibility as guardians, see "Guardian and Ward," §§ 10, 24.
- Coverture as affecting eligibility for liquor license, see "Intoxicating Liquors," § 58.
- Coverture as affecting eligibility to act as guardian ad litem, see "Infants," § 81.
- Coverture as affecting limitations, see "Limitation of Actions," § 73.
- Coverture as affecting power to appoint testamentary guardian, see "Guardian and Ward," § 11.
- Coverture as affecting right of female to purchase public lands, see "Public Lands," § 38.
- Coverture as affecting right of female to sign petition for election for issue of municipal bonds, see "Municipal Corporations," § 918.
- Coverture as affecting right to purchase state school lands, see "Public Lands," § 173.
- Coverture as affecting right to redeem from tax sales, see "Taxation," § 697.
- Coverture as affecting right to transfer shares of corporate stock, see "Corporations," § 134.
- Coverture, capacity to convey as affecting right to specific performance, see "Specific Performance," § 33.
- Coverture, conveyance of future interest in land devised, see "Wills," § 742.
- Creation of estate by entirety, see "Wills," § 627.
- Crimes by married women, illegal sale of intoxicating liquors, see "Intoxicating Liquors," § 170.
- Crimes by married women, robbery by husband and wife, see "Robbery," § 13.
- Criminal conversation, abatement of action by death of defendant, see "Abatement and Revival," § 58.
- Criminal conversation, competency of husband or wife as witness in action by other, see "Witnesses," § 58.
- Criminal conversation, discharge of judgment by debtor's discharge in bankruptcy, see "Bankruptcy," § 424.
- Criminal conversation, newly discovered evidence as ground for equitable relief, see "Judgment," § 446.
- Criminal conversation, privilege of witness, see "Witnesses," § 297.
- Criminal responsibility for leaving wife in house of prostitution, see "Prostitution."
- Criminal responsibility of husband for beating wife, see "Assault and Battery," § 48.
- Criminal responsibility of husband or wife for illegal sale of intoxicating liquors, see "Intoxicating Liquors," § 170.
- Dealing with people as the wife of a man as false personation, see "False Personation," § 2.
- Death of husband as revoking power of attorney by husband and wife to convey wife's separate estate, see "Principal and Agent," § 43.
- Declarations by husband or wife as evidence against the other, see "Evidence," § 248.
- Derivative settlement of married women, see "Paupers," § 20.
- Designation in will, see "Wills," §§ 496, 506.
- Designation of wife by name of husband, see "Names," § 2.
- Desire to be rid of spouse and infatuation or unlawful relations with another as motive for homicide, see "Homicide," § 166.
- Dispossessing wife under writ of possession against husband, see "Ejectment," § 120.

- Domicile of wife, see "Domicile," § 5.
- Election under provisions of will, see "Wills," §§ 778-803.
- Elements of damage for injuries to wife, see "Damages," § 38.
- Eligibility of wife, as petitioning creditor in bankruptcy proceedings against husband, see "Bankruptcy," § 76.
- Enforcement of antenuptial contract by child of party, see "Contracts," § 187.
- Enforcement of tax, see "Taxation," §§ 576, 582.
- Enforcing specific performance against husband or wife of party to contract, see "Specific Performance," § 21.
- Enticing and alienating, admissions, see "Evidence," § 248.
- Enticing and alienating, competency of husband or wife as witness in action for alienation of affections, see "Witnesses," § 58.
- Enticing and alienating, consideration for settlement of claim, see "Compromise and Settlement," § 9.
- Enticing and alienating, discharge of judgment by debtor's discharge in bankruptcy, see "Bankruptcy," § 424.
- Enticing and alienating, evidence of character of plaintiff, see "Evidence," § 106.
- Enticing and alienating, hearsay evidence, see "Evidence," § 317.
- Enticing and alienating, joinder of causes of action, see "Action," § 40.
- Enticing and alienating, misjoinder of causes of action, see "Action," § 38.
- Enticing and alienating, privileged communications, see "Witnesses," §§ 184-223.
- Enticing and alienating, *res gestæ*, see "Evidence," §§ 118-128.
- Enticing and alienating, restraining alienation, see "Injunction," § 94.
- Enticing and alienating, right of wife to testify to reason for refusing to live with plaintiff, see "Evidence," § 151.
- Estoppel of husband by joining in deed of property of wife, see "Estoppel," § 31.
- Estoppel of husband to deny validity of tax sale of husband's land to wife, see "Taxation," § 624.
- Evidence as to prior quarrels and ill feeling between, in prosecution of husband for wife murder, see "Homicide," § 157.
- Forgery of married woman's name to instrument, see "Forgery," § 12.
- Habeas corpus to determine right to custody of child, see "Habeas Corpus," § 38.
- Husband as informer in prosecution for adultery, see "Indictment and Information," § 8.
- Husband's deed to property of married woman, as color of title, see "Adverse Possession," § 71.
- Inadequate and excessive damages for loss of services of wife, see "Damages," § 133.
- Infatuation or unlawful relations with deceased's spouse as motive for homicide, see "Homicide," § 166.
- Injuries to wife accompanying husband on land of another by invitation, see "Negligence," § 32.
- Interest on indebtedness of husband and wife, see "Interest," § 14.
- Investment of funds of married infant under order of court, see "Infants," § 34.
- Issues, proof and variance in prosecution for embezzlement of property of, see "Embezzlement," § 35.
- Joinder of wife in husband's deed of general assignment, see "Assignments for Benefit of Creditors," § 62.
- Joinder of wife in transfer or incumbrance of homestead, see "Homestead," § 118.
- Judicial separation, see "Divorce," §§ 155, 314.
- Jurisdiction of federal courts as dependent on diverse citizenship, see "Courts," § 308.
- Liability for support in insane asylum, see "Insane Persons," § 53.
- Liability of husband for trespass on grave of deceased wife, see "Cemeteries," § 20.
- Liability of husband on promise to pay debt of wife, see "Contracts," § 47.
- Liability of husband on warranty in deed of husband of property in wife's name, see "Covenants," § 84.
- Liability of husband or wife to garnishment for the other's debt, see "Garnishment," § 23.
- Liability of married woman stockholder of national bank, see "Banks and Banking," § 248.
- Liability of sureties on husband's administration bond for distributive share of wife in decedent's estate, see "Executors and Administrators," § 528.
- Liability of wife for fraudulent representations by husband, see "Fraud," § 30.
- Liability of wife for waste committed by husband in representative capacity, see "Waste," § 13.
- Liability of wife on covenant with husband, see "Covenants," § 30.
- Liability on bond for support given in prosecution for seduction terminated by marriage of accused and prosecutrix, see "Seduction," § 54.
- Making property of married woman liable for debts for necessities as taking property without due process of law, see "Constitutional Law," § 299.
- Marriage and birth of issue as revocation of will, see "Wills," § 191.
- Marriage as vacating appointment of female administrator, see "Executors and Administrators," § 34.
- Marriage settlements, application of statute of frauds, see "Frauds, Statute of," §§ 4, 56.
- Marriage settlements, as renunciation of right to administer estate of deceased spouse, see "Executors and Administrators," § 19.
- Marriage settlements, as renunciation of testamentary provisions, see "Wills," § 784.
- Marriage settlements, bar of curtesy, see "Curtesy," § 11.
- Marriage settlements, bar to or release of dower, see "Dower," § 40.

- Marriage settlements, bar to or release of right of inheritance, see "Descent and Distribution," § 62.
- Marriage settlements, bar to or waiver of allowance from estate of deceased husband, see "Executors and Administrators," § 185.
- Marriage settlements by bankrupt, see "Bankruptcy," § 181.
- Marriage settlements, cancellation, concurrent jurisdiction of probate court and Supreme Court, see "Courts," § 472.
- Marriage settlements, cancellation, testimony as to transactions with persons since deceased, see "Witnesses," §§ 135, 150.
- Marriage settlements, effect of divorce on rights of parties, see "Divorce," § 322.
- Marriage settlements, effect on right to alimony after divorce, see "Divorce," § 236.
- Marriage settlements, equity jurisdiction of action to construe, see "Equity," § 23.
- Marriage settlements, specific performance, see "Specific Performance," §§ 28, 49, 82.
- Marriage settlements, validity as to creditors, see "Fraudulent Conveyances," §§ 94, 95.
- Marriage settlements, validity of settlement made on Sunday, see "Sunday," § 11.
- Married women as involuntary bankrupts, see "Bankruptcy," § 67.
- Measure of damages for injuries to or loss of services or society of wife, see "Damages."
- Mode of assessment of land of husband or wife, see "Taxation," § 338.
- Nature of devise for separate use of married woman, see "Wills," § 601.
- Necessaries and family expenses, claims against estate of deceased husband, see "Executors and Administrators," § 202.
- Necessaries and family expenses, liability for necessities furnished insane wife, see "Insane Persons," § 53.
- Necessaries and family expenses, liability for services of attorney to wife in suit for divorce, see "Divorce," §§ 196-198.
- Necessaries and family expenses, liability of estate of deceased husband or wife for funeral expenses, see "Executors and Administrators," § 214.
- Necessaries and family expenses, liability of husband as administrator of wife's estate, see "Executors and Administrators," § 109.
- Necessaries and family expenses, liability of insane husband, see "Insane Persons," § 75.
- Necessaries and family expenses, liability of wife's estate, see "Executors and Administrators," § 205.
- Necessity for wife to join in notice to terminate tenancy, see "Landlord and Tenant," § 94.
- Necessity of administration of estate of husband or wife, see "Executors and Administrators," § 3.
- Negating relation in indictment for rape, see "Rape," § 22.
- Notice to street railroad company of injuries to married woman, see "Street Railroads," § 105.
- Obligation of wife to support husband out of her separate property as debt within constitutional inhibition against imprisonment for debt, see "Constitutional Law," § 83.
- Obtaining money by falsely pretending to be unmarried, see "False Pretenses," § 6.
- Oral statement by one as admission against the other, see "Evidence," § 220.
- Political status of women married to aliens, see "Citizens," § 8.
- Political status of women married to citizens, see "Citizens," § 7.
- Possession of land by husband and wife as notice of interest of either to purchase from the other, see "Vendor and Purchaser," § 232.
- Power of married man to give away his property, see "Gifts," § 6.
- Preference as creditor, see "Assignments for Benefit of Creditors," § 109.
- Presumption as to continuance of relation, see "Evidence," § 67.
- Presumption from failure to call husband or wife as witness, see "Evidence," § 77.
- Presumption in respect to credit for expenses arising from injury to wife, see "Damages," § 163.
- Presumption of innocence of husband charged with murder of wife, see "Homicide," § 148.
- Presumptions as to coercion of wife by husband to commit crime, see "Criminal Law," § 310.
- Privileged communications, see "Witnesses," §§ 188-195.
- Proceedings by husband or wife to sell property of insane spouse as denial of due process of law, see "Constitutional Law," § 306.
- Promise of married woman as consideration for transfer attacked by grantor's creditors as fraudulent, see "Fraudulent Conveyances," § 76.
- Property and rights therein of married women as consideration for contract, see "Contracts," § 62.
- Property of husband and wife, conveyance to "husband, wife, and children," see "Deeds," § 136.
- Property of husband and wife, effect of divorce on title to property conveyed to husband and wife, see "Divorce," § 316.
- Property of husband and wife, effect of partition deed to husband and wife, see "Partition," § 8.
- Property of husband and wife, estoppel of heirs of wife to contest title of surviving husband under defective partition deed, see "Estoppel," § 93.
- Property of husband and wife, lien for taxes on property held by entirety, see "Taxation," § 507.
- Property of husband and wife, mechanic's lien on estates by entirety, see "Mechanics' Liens," § 71.
- Property of husband and wife, right of action for trespass, see "Trespass," § 29.
- Property of married woman, disposition on divorce, see "Divorce," §§ 249-254.

Property of married woman, evidence of title in action for conversion, see "Trover and Conversion," § 37.

Property of married woman, question as to title in action for conversion, see "Trover and Conversion," § 66.

Property of married woman, rights of husband dependent on nature of state land certificates, see "Public Lands," § 174.

Property of married woman, rights of wife as pre-emptor of public lands, see "Public Lands," § 172.

Property of married woman, title to support trespass, see "Trespass," § 19.

Property purchased from survivor as subject of sale, see "Vendor and Purchaser," § 7.

Property subject to testamentary disposition, see "Wills," § 6.

Purchase by husband of ticket for wife as constituting contract between husband and carrier, see "Carriers," § 253.

Recovery by husband for injuries to wife from negligence of fellow servant of husband, see "Master and Servant," § 159.

Reformation of instrument against married woman, see "Reformation of Instruments," § 28.

Res gestæ in prosecution of husband for complicity in murder of wife, see "Criminal Law," § 364.

Restrictions on disposition of property by testator leaving husband or wife, see "Wills," § 11.

Right of action for seduction of child, see "Seduction," § 7.

Right of husband of settler to purchase additional school land, see "Public Lands," § 173.

Right of husband to contest will of wife, see "Wills," § 229.

Right of husband to custody of Indian wife, see "Indians," § 6.

Right of inheritance of survivor, see "Descent and Distribution," §§ 52-67.

Right of married daughter to benefit of allowance from parent's estate, see "Executors and Administrators," § 180.

Right of married daughter to partition of allowance from parent's estate, see "Executors and Administrators," § 173.

Right of married woman to acquire legal settlement, see "Paupers," § 19.

Right of married women to exemptions, see "Exemptions," §§ 19, 118; "Homestead," § 21.

Right of survivor to exemptions, see "Exemptions," § 30; "Homestead," §§ 134-153.

Right of widow to quarantine, see "Executors and Administrators," § 175.

Right of wife to maintain action for trespass on land of husband, see "Trespass," § 20.

Right of wife to purchase at execution sale of husband's property, see "Execution," § 228.

Rights becoming vested at time of marriage, see "Constitutional Law," § 93.

Rights in respect to appointment as administrator, see "Executors and Administrators," § 17.

Rights in respect to dead body of husband or wife, see "Dead Bodies."

Rights of debtor's wife as to application of payments, see "Payment," § 47.

Rights of heirs in respect to mortgage made by ancestor without joinder of wife, see "Descent and Distribution," § 129.

Rights of wife in homestead entered by husband, see "Public Lands," § 35.

Rights under contract of transportation, see "Carriers," § 72.

Rights under Oregon donation act, see "Public Lands," § 44.

Right to sue for damages from illegal sale of liquor to husband or wife, see "Intoxicating Liquors," § 297.

Secondary evidence in prosecution against husband of letter in possession of wife, see "Criminal Law," § 402.

Separation and separate maintenance, actions, appellate jurisdiction as dependent on whether case involves freehold, see "Courts," § 213.

Separation and separate maintenance, actions, commitment for contempt for failure to obey judgment as constituting imprisonment for debt, see "Constitutional Law," § 83.

Separation and separate maintenance, actions, denial of right to defend as deprivation of property without due process of law, see "Constitutional Law," § 305.

Separation and separate maintenance, actions, foreign judgment as evidence of abandonment, see "Judgment," § 822.

Separation and separate maintenance, actions, jurisdiction to issue writ of ne exeat, see "Ne Exeat," § 4.

Separation and separate agreements, actions, recovery as claim against deceased husband's estate, see "Executors and Administrators," § 202.

Separation and separate maintenance, actions, review of decision as dependent on finality, see "Appeal and Error," § 77.

Separation and separate maintenance, affecting domicile of wife or children, see "Domicile," § 5.

Separation and separate maintenance, agreement by wife to pay attorney per cent. of alimony recovered as champertous, see "Champerty and Maintenance," § 5.

Separation and separate maintenance, agreement for separation, defense to action for divorce, see "Divorce," § 40.

Separation and separate maintenance, arbitration in case of agreement to separate, see "Arbitration and Award," § 80.

Separation and separate maintenance, bar to allowance from estate of deceased husband or wife, see "Executors and Administrators," § 188.

Separation and separate maintenance, bar to allowance of temporary alimony in suit for divorce, see "Divorce," § 213.

Separation and separate maintenance, bar to or release of dower, see "Dower," §§ 42, 58.

Separation and separate maintenance, cancellation of allowance of solicitor's fees because of champertous agreement between wife and her attorney, see "Champertry and Maintenance," § 5.

Separation and separate maintenance, contract for payment to wife on separation as contravening public policy, see "Contracts," § 111.

Separation and separate maintenance, effect as to amount of damages for wrongful death, see "Death," § 86.

Separation and separate maintenance, effect as to right of inheritance, see "Descent and Distribution," § 62.

Separation and separate maintenance, effect of invalidity of agreement on other terms of contract, see "Contracts," § 137.

Separation and separate maintenance, enforcement of contract made in consideration of separation, see "Specific Performance," § 55.

Separation and separate maintenance, entry of wife's home by husband after separation as trespass, see "Trespass," § 10.

Separation and separate maintenance, right of divorced wife to maintain action for maintenance, see "Divorce," § 316.

Separation and separate maintenance, rights of creditors of legatee who has abandoned his wife, see "Wills," § 868.

Separation and separate maintenance, specific performance of agreement, see "Specific Performance," § 83.

Separation and separate maintenance, voluntary separation ground for divorce, see "Divorce," § 36.

Services and earnings of wife, negating contributory negligence in action for loss of services, see "Negligence," § 113.

Statements by as self-serving declarations, see "Evidence," § 271.

Statute imposing liability on shareholders as including married women, see "Corporations," § 241½.

Statutory actions for death of husband or wife, see "Death," §§ 7-98.

Stay of action by husband to recover wife's property pending her action for divorce, see "Action," § 69.

Stipulations and agreements as to alimony in actions for divorce, see "Divorce," § 236.

Substituted service on husband by leaving copy with wife, see "Process," § 79.

Support of wife, failure as ground for divorce, see "Divorce," § 31.

Support of wife, liability of husband for support of indigent wife, see "Paupers," § 37.

Taxation of property of husband or wife, see "Taxation," § 88.

Testamentary capacity of married woman, see "Wills," §§ 28-30.

Title of trustee in bankruptcy to bankrupt's estate in wife's land, see "Bankruptcy," § 143.

Undue influence affecting validity of will, see "Wills," § 157.

Unlawful cohabitation as affecting legality of partnership contract, see "Partnership," § 26.

Validity of mortgage by wife to compromise criminal prosecution against husband, see "Contracts," § 128.

Verification of claim of wife against city, see "Municipal Corporations," § 1007.

Void deed of married woman as color of title, see "Adverse Possession," § 71.

Wife as competent witness to husband's will, see "Wills," § 116.

*Conveyances, contracts, and other transactions between husband and wife.*

See post, §§ 36-54, in this topic.

Abandonment by wife of claim to property conveyed to her by husband, see "Abandonment," § 4.

Adoption of common law rule, see "Common Law," § 12.

As claim provable against husband's insolvent estate, see "Insolvency," § 105.

As creating constructive trusts, see "Trusts," §§ 81, 103.

As obligation of estate of deceased husband or wife, see "Executors and Administrators," § 202.

As within statute of frauds, see "Frauds, Statute of," §§ 56, 74.

Contracts, consideration, see "Contracts," § 62.

Contracts, illegal marriage as consideration for, see "Contracts," § 108.

Contracts, specific performance, see "Specific Performance," § 84.

Conveyance of homestead, see "Homestead," § 113.

Conveyance to husband of dower right, see "Dower," § 49.

Deeds, duress, see "Deeds," § 71.

Deeds, evidence as to validity, see "Deeds," §§ 196, 211.

Deeds, evidence of consideration, see "Deeds," § 195.

Deeds, fraud, see "Deeds," § 70.

Deeds, love and affection as consideration, see "Deeds," § 17.

Deeds, reformation, see "Reformation of Instruments," § 7.

Deeds, sufficiency of delivery in general, see "Deeds," § 56.

Deeds, undue influence, see "Deeds," § 72.

Deeds, validity of assent, see "Deeds," §§ 68-78.

Defenses against bona fide holder of bill or note, see "Bills and Notes," § 366.

Estate of wife in realty conveyed by husband as supporting real covenant, see "Covenants," § 80.

Fraudulent conveyance, consideration, see "Fraudulent Conveyances," § 95.

Fraudulent conveyances, indebtedness, insolvency, and intent of grantor, see "Fraudulent Conveyances," §§ 54-72.

Fraudulent conveyances, property and rights transferred, see "Fraudulent Conveyances," §§ 43-53.

Fraudulent conveyances, relation of parties, see "Fraudulent Conveyances," §§ 104-106.

Gifts, as claim provable against husband's estate in bankruptcy, see "Bankruptcy," § 314.

- Gifts, inheritance from donee, see "Descent and Distribution," § 61.
- Implied release of obligation, see "Release," § 1.
- Liability of husband to exemplary damages for slander by wife, see "Libel and Slander," § 120.
- Partition by mutual consent, see "Partition," § 3.
- Possession by husband or wife of property sold to the other as fraudulent, see "Fraudulent Conveyances," § 146.
- Preference as creditor of husband or wife, fraudulent as to other creditors, see "Fraudulent Conveyances," § 118.
- Priority of assignment to wife, see "Assignments," § 85.
- Provability of wife's claim against husband's estate in bankruptcy, see "Bankruptcy," § 314.
- Purchase by husband at sale held by wife as administrator, see "Executors and Administrators," § 365.
- Recovery of money paid husband under contract void under statute of frauds, see "Frauds, Statute of," § 138.
- Retention of possession or apparent title by grantor as element of fraud, see "Fraudulent Conveyances," § 146.
- Right of divorced wife to maintain action for personal tort committed by husband while living together, see "Divorce," § 316.
- Transfers of shares of corporate stock, see "Corporations," §§ 114, 134, 139-141.
- Married women's separate property.*
- See post, §§ 110-244, in this topic.
- Accord and satisfaction of wife's claim against husband, see "Accord and Satisfaction," § 5.
- Act providing that personal property belonging to woman on her marriage shall remain her separate property applied to existing marriages as depriving husband of vested rights, see "Constitutional Law," § 93.
- Allowance of alimony to husband out of wife's separate estate, see "Divorce," § 231.
- Application of payments to debts of husband or wife, see "Payment," § 39.
- Assignment to husband of mortgage on wife's separate estate, as merging estates, see "Mortgages," § 268.
- Authority of husband to place improvements on wife's land as affecting right to mechanic's lien, see "Mechanics' Liens," § 71.
- Averments in indictment as to ownership, see "Indictment and Information," § 105.
- Bastardy bond, see "Bastards," § 89.
- Capacity of wife to devise or bequeath, see "Wills," § 29.
- Disposition on divorce, see "Divorce," §§ 250, 252.
- Donation of husband's services in fraud of his creditors, see "Fraudulent Conveyances," § 104.
- Homestead in separate estate, see "Homestead," § 87.
- Improvements by husband as fixtures, see "Fixtures," § 10.
- Improvements by husband in fraud of creditors, see "Fraudulent Conveyances," § 106.
- Improvements by husband, nature as property, see "Property," § 5.
- Insurance on life of bankrupt, see "Bankruptcy," § 143.
- Lien of hotel keeper for board due from husband, see "Innkeepers," § 13.
- Property acquired by adverse possession, see "Adverse Possession," § 105.
- Provability of claims against wife's estate in bankruptcy, see "Bankruptcy," § 314.
- Restraining interference by husband with separate estate pending suit for divorce, see "Divorce," § 87.
- Satisfaction of wife's claim as against property transferred to her by husband to defraud creditors, see "Fraudulent Conveyances," § 322.
- Settlement of claims of wife against husband for separate property in divorce suit, see "Divorce," § 154.
- Statutes governing inheritance, see "Descent and Distribution," § 6.
- Subrogation of wife as surety for husband to rights of creditor, see "Subrogation," § 7.
- Subrogation to lien on estate, see "Subrogation."
- Title of trustee in bankruptcy to property of wife of bankrupt, see "Bankruptcy," § 143.
- Writ of possession for land claimed by wife, see "Ejectment," § 119.

## I. MUTUAL RIGHTS, DUTIES, AND LIABILITIES.

### Cross-References.

- As to wife's separate property, see post, §§ 134-146.
- Rights of action for personal injuries, see post, § 209.
- Agency of husband for third person in transaction with wife, see "Principal and Agent."
- Conspiracy to prevent performance of marital duties, see "Conspiracy," § 3.

- Liability for counsel fees and expenses of wife in action for divorce, see "Divorce," §§ 196-198.
- Liability for support in insane asylum, see "Insane Persons," § 53.
- Obligation of wife to support husband out of her separate property as debt within constitutional provision against imprisonment for debt, see "Constitutional Law," § 83.
- Refusal of wife to join in conveyance, effect on right of broker to commissions, see "Brokers," § 61.

Right of husband to custody of Indian wife, see "Indians," § 6.  
Rights becoming vested at time of marriage, see "Constitutional Law," § 93.

### § 1. The relation in general.

#### Annotation.

Statutory provisions, see Code, art. 45, §§ 1, et seq.; Id. [vol. 3], art. 45, §§ 4, 7.

### § 2. What law governs.

#### Cross-References.

As to construction and operation of marriage settlement, see post, § 31.  
As to conveyances and contracts to convey separate property, see post, § 180.  
As to conveyances, contracts, and other transactions between husband and wife in general, see post, § 36½.  
As to disabilities and privileges of coverture, see post, § 56.  
As to liabilities and charges on separate property, see post, § 146½.  
As to right of action by or against husband or wife, see post, § 203½.  
As to separate property of married woman, see post, § 110½.

(a) A married woman became entitled by devise to real estate, which, under proceedings instituted to obtain a partition of the same, was sold; and the decree for the sale thereof provided, with the consent of the husband, who, in his answer, disclaimed all right, title, or interest in said real estate, that the portion of the proceeds of the sale thereof be allotted to the wife, and be deemed her separate estate, free from any claim or control of her husband or his creditors. The auditor, in pursuance of this decree, in his account distributing the proceeds of the sale, allotted to the sole and separate use of the wife her portion thereof, and the same was paid to her attorney. *Held*, that, the residence of the husband and wife, at the time she became entitled to this fund, in a state where the husband, by the law thereof, was entitled to all the personal property of the wife, did not vest the fund in him.—*Smith v. McAtee*, 27 Md. 420, 92 Am. Dec. 641. [Cited and annotated in 57 L. R. A. 356, on conflict of laws as to matrimonial property.]

(b) Where there is no express marriage contract, the law of the matrimonial domicile will govern as to all the rights of the parties to their present property in that place, and as to all personal property everywhere. As to immovable property, the law *rei sitæ* will prevail.—*Newcomer v. Orem*, 2

Md. 297, 56 Am. Dec. 717. [Cited and annotated in 57 L. R. A. 353, 359, on conflict of laws as to matrimonial property; in 2 L. R. A. (N. S.) 412, on conflict of laws as to wills.]

(c) Under act 1798, c. 101, conferring on a surviving husband the right to sue for the personal estate of his deceased wife, the right to sue exists where the assets are within the state, though the wife may have died in another state, where he would not be entitled to her estate.—*Hatton v. Weems*, 12 G. & J. 83. (See Code, art. 45, § 19.) [Cited and annotated in 3 L. R. A. (N. S.) 1144, on validity of devise over on indefinite cessation of first taker's lineal descendants.]

### § 3. Personal rights and duties.

#### Cross-References.

Effect of antenuptial settlement on personal rights and duties, see post, § 31.  
Domicile by operation of law, see "Domicile," § 5.

(a) There is no tribunal competent to entertain a suit for the restoration of conjugal rights.—*Jamison v. Jamison*, 4 Md. Ch. 289. [Cited and annotated in 38 L. R. A. (N. S.) 961, 962, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

(b) The Court of Chancery has authority to order a husband living with his wife to give sufficient security under penalty to treat his wife well, and not do her any other harm than such as he may by government and chastisement.—*Bread's Case*, 2 Bland 562, note. [Cited and annotated in 38 L. R. A. (N. S.) 953, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

### § 4. Support of family.

#### Cross-References.

Agreements between husband and wife as to support, see post, § 39.  
Liabilities for necessities and family expenses, see post, § 19.  
Separation and separate maintenance, see post, §§ 277-301.  
Support of husband from wife's separate estate, see post, § 140.  
Failure to support wife ground for divorce, see "Divorce," § 31.  
Liability of husband for support of indigent wife, see "Paupers," § 37.

(a) A husband must support his wife, when he has ability to do so.—*McCaddin v. McCaddin*, 116 Md. 567, 82 Atl. 554. [Cited and annotated in 38 L. R. A. (N. S.) 963, on power, in absence of statute, to decree



alimony or maintenance, independently of proceedings for divorce.]

### § 5. Services and earnings of wife.

#### Cross-References.

- Earnings as separate property, see post, § 126.
- Parties in action for services, see post, § 221.
- Questions for jury in action for services, see post, § 235.
- Right of action by husband or wife to recover for loss of services, see post, § 209.
- Right of action by husband or wife to recover for services or earnings of wife, see post, § 208.
- Rights and liabilities of husband as to earnings of wife as sole trader, see post, § 99.
- Validity of contracts by married women for services, see post, § 82.
- Negating contributory negligence in action for loss of services, see "Negligence," § 113.

### § 6. Property of husband.

#### Cross-References.

- Agency of wife for husband, see post, § 22.
- Conveyances by husband in fraud of wife's right as distributee of deceased husband's estate, see "Descent and Distribution," § 69.
- Conveyances by husband in fraud of wife's right of dower, see "Dower," § 20.
- Conveyances by husband in fraud of wife's right to alimony, see "Divorce," §§ 275, 276.
- Power of married man to give away his property, see "Gifts," § 6.

#### Annotation.

- Right of wife to relief against conveyance or transfer made or contemplated by her husband in fraud of her support.—18 L. R. A. (N. S.) 1147, note.
- Conveyance of property in contemplation of, but before negotiations for, marriage, as a fraud.—9 L. R. A. (N. S.) 955, note.

(a) A voluntary conveyance by a man of all his estate, made on the eve of his marriage, without the knowledge of the intended wife, and with the intent of defeating her marital rights, is a fraud on the wife, and will be set aside.—*Collins v. Collins*, 98 Md. 473, 57 Atl. 597, 103 Am. St. Rep. 408. [Cited and annotated in 48 L. R. A. (N. S.) 514, on dower rights in property conveyed before marriage; in 3 L. R. A. (N. S.) 775, on husband's right to give away his personalty without wife's consent.]

(b) A husband, by a voluntary deed without consideration, conveyed nearly the whole of his estate to his nephew, and stated at the time to the conveyancer that he intended

to deprive his wife of the property. The deed was executed and recorded in 1872, and the grantee lived in another state and never had possession of the deed until after the death of the grantor, in 1873. Prior to the execution of the deed, a power of attorney was sent to the grantee and executed by him, by which the grantor was authorized "to sell and convey, mortgage, or otherwise dispose of the property." In 1872 the grantor mortgaged one of the pieces of property mentioned in the deed for the purpose of securing a loan for his own use, and the mortgage and notes were sent to the grantee and executed by him. The grantor remained in possession of the property until his death. *Held*, that, the deed was fraudulent as against the widow, and would be set aside at her instance.—*Sanborn v. Lang*, 41 Md. 107.

(c) A laborer was employed on condition that he would abstain from drink, and would allow his wife to draw his wages, to be used in support of himself and wife and children. Part of the wages were drawn by the wife to support the family, and the balance deposited in a savings bank, in the name of the employer, for the wife. The balances so deposited constituted the fund in dispute. It did not appear that the husband directed or ever knew of the form in which the deposit was made. *Held*, that, the wife had no right to this fund as her separate estate, so that she could dispose of it by will or otherwise.—*McCubbin v. Patterson*, 16 Md. 179.

(d) Gifts or voluntary transfers of property by a husband, if not made with the actual intent of defeating the rights of the wife, will be sustained, notwithstanding they may leave her without the means of subsistence.—*Feigley v. Feigley*, 7 Md. 537, 61 Am. Dec. 375. [Cited and annotated in 3 L. R. A. (N. S.) 776, on husband's right to give away his personalty without wife's consent; in 18 L. R. A. (N. S.) 1156, on right of wife to relief against transfer made or contemplated by husband in fraud of her support.]

(e) In St. 13 Eliz. c. 5, vacating fraudulent conveyances, the words "creditors and others" include a wife made the victim of her husband's fraud.—*Feigley v. Feigley*, 7 Md. 537, 61 Am. Dec. 375. (See Alex. Brit. Stat. [Coe's ed.], 499.) [Cited and annotated, see *supra*.]

(f) Where it was proved that the husband, with a design to deprive his widow of her share of his personal estate, bought lands with it, and then executed the conveyances thereof, but did not part with the possession, but lived on and enjoyed the property until his death, the deeds were set aside as frauds on the rights of the wife.—*Hays v. Henry*, 1 Md. Ch. 337.

### § 7. Property of wife.

#### Cross-References.

Rights and liabilities of husband as to business of wife as sole trader, see post, § 99.

Separate property, see post, §§ 110-202.

Construction of decree vesting title to property, in married woman, see "Equity," § 431.

Disposition on divorce, see "Divorce," §§ 249-254.

Rights of husband dependent on nature of state land certificates, see "Public Lands," § 174.

Rights of wife of pre-emptor of public lands, see "Public Lands," § 172.

Stay of action by husband to recover wife's property pending her action for divorce, see "Action," § 69.

Title, evidence of in action for conversion, see "Trover and Conversion," § 37.

Title, question for jury in action for conversion, see "Trover and Conversion," § 66.

Title to support trespass, see "Trespass," § 19.

### § 8.— In general.

(a) A husband received his wife's share of the proceeds of her father's real estate prior to the adoption of the Code 1860, art. 45, §§ 1, 2, and used it to purchase land in his own name, under a promise to her, before the purchase, that the money should be so applied and treated as a loan to him. *Held*, that, on the insolvency of the husband, the wife's claim for the money loaned was an equitable one against the husband, and should be allowed.—*Oswald v. Hoover*, 43 Md. 360. (See Code 1911, art. 45, §§ 1, et seq.; *Id.* [vol. 3], art. 45, §§ 4, 7.)

(b) At law, the right of a husband to release a legacy bequeathed to his wife, so as to bar her interest in it, is indisputable.—*Weems v. Weems*, 19 Md. 334.

(c) If a conveyance be made by a feme sole during the treaty and in contemplation of marriage, and it does not appear that the intended husband had either express or con-

structive notice of it, the onus is on the party claiming under the deed to show affirmatively that he had notice.—*O'Neill v. Cole*, 4 Md. 107.

(d) If the conveyance be duly registered, it will be regarded as constructive notice to the husband.—*Cole v. O'Neill*, 3 Md. Ch. 174; *O'Neill v. Cole*, 4 Md. 107.

(e) In order that a voluntary conveyance, made by a woman in contemplation of marriage, may be avoidable by her future husband, from whom it was concealed or who had no notice of it, as being in derogation of his marital rights and a fraud upon his just expectations, it is indispensable that he should be kept in ignorance of it up to the moment of his marriage; and then the evidence must show fraud.—*Cole v. O'Neill*, 3 Md. Ch. 174.

(f) A legacy to a married woman was paid over by the executor to her husband on his promise to invest the same for her. He failed to so invest it, and at his death his estate was found insufficient to pay all his debts; and the widow, who was also administratrix, claimed a right to retain the amount of the legacy as a debt due her from her husband's estate. *Held*, that, the husband's promise to invest the money for the benefit of his wife was based on a sufficient consideration.—*State v. Reigart*, 1 Gill 1, 39 Am. Dec. 628. [Cited and annotated in 53 L. R. A. 359, on moral obligation as consideration; in 26 L. R. A. (N. S.) 522, on moral obligation as consideration for express promise.]

### § 9.— Real property.

(a) A married woman becoming seised of land by conveyance, under act 1842, c. 293, § 1, is vested with the estate in fee simple; not, however, to her sole and separate use, but subject to the marital rights of her husband, as of curtesy.—*Mutual Fire Ins. Co. v. Deale*, 18 Md. 26, 79 Am. Dec. 678. (See Code 1911, art. 45, §§ 1-7; *Id.* [vol. 3], art. 45, §§ 4, 7.) [Cited and annotated in 66 L. R. A. 659, 661, on husband's insurable interest in wife's property; in 69 L. R. A. 375, on effect of conveyance by husband to wife.]

(b) A feme sole boarded with a feme covert, and loaned her money to assist her in improving her separate estate. Afterwards she married, and with her husband filed a

bill against the feme covert and her husband for the payment of a note given by the wife. *Held*, that, a judgment held by the husband against complainants, and which was recovered on a claim for the board of the feme sole, was well pleaded by way of set-off.—*Lane v. Fallen*, 16 Md. 352.

(c) Where a female infant gave a bond for the conveyance of land, with security, conditioned to convey at a time after she came of age, and the purchase money was paid to her husband after his marriage, he could be restrained, by injunction, from recovering the land at law, during his lifetime.—*Browner v. Franklin*, 4 Gill 463.

(d) Where a husband, in possession of land belonging to his wife and her children by a former marriage, on the children coming of age, surrenders the land to such children and resigns any claim for the dower of his wife, on filing of a bill thereafter to recover such dower he is not entitled to interest on the amount of the rents and profits which he is entitled to recover.—*Darnall v. Hill*, 12 G. & J. 388. [Cited and annotated in 21 L. R. A. 183, on right to mesne profits or damages for detention of dower.]

(e) Where a widow, having a right of dower in lands, instead of suing therefor or receiving an assignment of dower, arranges with the heir at law to allow him to rent out the lands under an agreement that in lieu of dower she is to receive one-third of the annual rents, her husband, after her marriage, may in lieu of an assignment of dower make a like arrangement, and recover his proportion of the rents received to his use in the lifetime of his wife by an action of assumpsit, brought either before or after her death.—*Marshall v. McPherson*, 8 G. & J. 333.

(f) A husband made a parol lease of his wife's lands in the fall of 1810 for the year 1811, and the lessee gave his bond to the husband for the rent, payable in August, 1811, which bond the husband assigned, and in August, 1811, it was paid by the lessee. In April, 1811, the husband died. Part of the land was seeded in wheat in 1810, and the residue was woodland. The wife brought an action against the lessee for use and occupation from April, 1811, to the end of the year. *Held*, that, the parol lease by the husband

terminated with his death, and the lessee had no right to possess the premises, except to preserve the crop, and that, if he had occupied for any other purpose, he was liable therefor to the wife.—*Bevans v. Briscoe*, 4 H. & J. 139.

### § 10.— Personal property.

(a) The mere receipt and appropriation by a husband of money received by his wife from the estate of deceased relatives would not constitute him her debtor, unless the money was obtained on a promise to repay or secure it.—*Downs v. Miller*, 95 Md. 602, 53 Atl. 445.

(b) Money received by a husband from the sale of his wife's real estate, made before the adoption of the Code 1860, art. 45, §§ 1, 2, belongs to the husband absolutely, unless, at the time he received it, he promised the wife to repay it, and obtained possession of it upon the faith of such promise.—*Sabel v. Slingsluff*, 52 Md. 132. (See Code 1911, art. 45, §§ 1-4; *Id.* [vol. 3], art. 45, § 4.)

(c) Moneys arising from the sale of a wife's inheritance and from her distributive share of her other personal estate before the adoption of the Code 1860, art. 45, §§ 1, 2, is subject to the control of the husband by virtue of his marital rights.—*Plummer v. Jarman*, 44 Md. 632. (See Code 1911, art. 45, §§ 1-4; *Id.* [vol. 3], art. 45, § 4.)

(d) Where real estate was sold under a decree of court for partition, and a married woman, entitled to a distributive share thereof, died after the sale, her husband is entitled to her share of the proceeds of the sale.—*Jones v. Plummer*, 20 Md. 416. [Cited and annotated in 30 L. R. A. 317, on tenancy by entireties.]

(e) A sale of real estate for distribution was ratified, the terms being partly cash and partly bonds for credit installments. The account for distribution of proceeds to the heirs was ratified, and the trustee ordered to pay accordingly. Between the times of the statement and ratification of the account, one of the heirs, a daughter, married. Shortly before the last credit bond fell due, she and her husband, by joint writing under seal, assigned their interest in this installment to the purchaser. The husband, before the pay-

ment fell due, deserted his wife and child and absconded. The purchaser petitioned the court to allow him the sum assigned to him, and to enjoin the trustee to that extent from suing him on his bond. The wife claimed the whole sum as an equitable provision for herself and child. *Held*, that, this assignment did not operate as a reduction to possession of the chose in action, if any there were, nor even as a conversion of such rights of the wife as a court of equity would recognize and enforce, but only as a conversion of the husband's interest in the chose, and a transfer of the power, at law or equity, to reduce it to possession.—*Norris v. Lantz*, 18 Md. 260.

(f) Property held to the sole and separate use of a married woman under acts 1842 and 1843 is in no manner subject to the marital rights of a husband.—*Bridges v. McKenna*, 14 Md. 258. (See Code 1911, art. 45, §§ 1-4; *Id.* [vol. 3], art. 45, § 4.)

(g) If a debtor of a married woman pays to her a debt during coverture, the payment inures to the benefit of the husband, and the money becomes his.—*Turton v. Turton*, 6 Md. 375.

(h) Under an agreement by a husband to give his wife an equivalent for land which she united with him in selling for his use, she can claim only the value of the land, with interest from his death, for during his life he was entitled to the rents, issues, and profits of such land.—*Bowie v. Stonestreet*, 6 Md. 418, 61 Am. Dec. 318.

(i) A wife cannot recover from her husband arrears of pin money, where she has not yearly demanded it.—*Miller v. William-son*, 5 Md. 219.

(j) When a husband and wife sell the real estate of the latter, and the bonds or notes for the purchase money are made payable to the wife, they are choses in action liable to be attached by the husband's creditors; for choses in action accruing to the wife during coverture vest in the husband.—*Peacock v. Pembroke*, 4 Md. 280.

(k) A testator, who died in Louisiana, directed his executors to keep his estates, real and personal, together for three years, and then sell them. After the expiration of three

years they were sold, and the notes of the purchaser were divided among the parties entitled to the property by the will. A mortgage was given to secure notes for a portion of the estate, which was not foreclosed until after the death of the wife of one of the parties to this suit; said wife being one of the heirs of said testator. At the mortgage foreclosure sale, the property was purchased in the name of and for the heirs of the testator, and afterwards resold, and a portion of the proceeds vested in another estate in Louisiana. *Held*, that, as the notes given for the sale belonged to the husband in right of his wife, he was entitled to the proceeds when the mortgage foreclosure sale was made, and the reinvestment of a part thereof must also inure to his benefit.—*Newcomer v. Orem*, 2 Md. 297, 56 Am. Dec. 717. [Cited and annotated in 57 L. R. A. 353, 359, on conflict of laws as to matrimonial property; in 2 L. R. A. (N. S.) 412, on conflict of laws as to wills.]

(l) The personal property of the wife becomes the property of the husband on marriage.—*Levering v. Heighe*, 2 Md. Ch. 81.

(m) The choses in action of a deceased wife vest in the trustee of her surviving husband, on his application for the benefit of the insolvent laws, though he fails to obtain his final release.—*Glasgow v. Sands*, 3 G. & J. 96.

(n) Where plate was given to a married woman by her brother, without any evidence as to the intention of the giver, the marital rights instantly attached, and it became immediately the property of the husband.—*Carroll v. Lee*, 3 G. & J. 504, 22 Am. Dec. 350.

(o) If real estate of a wife is sold under the act to direct descents, the money paid to the commissioners making the sale by the purchaser may be attached by the husband's creditors.—*State v. Krebs*, 6 H. & J. 31.

(p) Where land held in common was sold on account of the difficulty of a beneficial partition, the sale ratified, and the proceeds paid into court, but no order made with regard to the final disposition of the portion of a feme covert, one of the tenants, it was *held*, that on her death, and the subsequent death of her husband without anything having been done to entitle his representatives

to claim under act 1798, c. 101, subc. 5, § 8, her share survived to her personal representatives. Had the court directed the proceeds to be paid to the husband and wife, or to him alone, or had they made the usual order of ratification of the auditor's statement of the amount due the respective claimants, directing the trustee to pay over accordingly, the representatives of the husband would have been entitled.—*Leadenham's Ex'rs v. Nicholson*, 1 H. & G. 267. (See Code, art. 45, § 19.)

### § 11.—Reduction to possession by husband.

#### Cross-Reference.

See ante, § 10.

(a) A wife can have no claim against her husband or his estate, insolvent, under an assignment for the benefit of creditors, for her personal property appropriated by him at a time when, under the existing law, he was entitled to it by virtue of his marital rights, although he then promised to repay it.—*Farmers & Merchants Nat. Bank v. Jenkins*, 65 Md. 245, 3 Atl. 302. [Cited and annotated in 56 L. R. A. 834, on burden of proof of husband's debt to wife for property received from her.]

(b) A., the wife of B., died, possessed of bonds held by a safe-deposit company, "through B., and subject to the order of either," as shown by the receipt, which at A.'s death was in the hands of her brother, as were city stock certificates of A. The brother delivered receipts and certificates to B., who was unable to leave his house from sickness. His son applied at the office of the city register for a transfer of the stock to B., but was refused unless B. should apply in person, which he never did. His son also applied to the treasurer of the safe-deposit company, presented the receipt, and requested delivery of the bonds for B., but was refused unless B. appeared in person, or executed a power of attorney to withdraw the bonds, neither of which he ever did. B. died shortly afterwards. Held, that B. had never reduced stocks or bonds to his possession, and that, his administrator having obtained possession of them, trover would lie by the administrator of A.—*Brown v. Bokee*, 53 Md. 155.

(c) Code 1860, art. 45, § 2, does not defeat art. 93, § 32, but must be taken as an exception to it; and under it a husband, surviving, will take all the personal property of the wife, except her choses in action not reduced to possession or on which he has not obtained judgment, and these he will not take.—*Stockett v. Bird's Adm'r*, 18 Md. 484. (See Code 1911, art. 45, §§ 1-4; art. 93, § 31, note; Id. [vol. 3], art. 45, § 4.)

(d) The institution of a suit by husband and wife to recover a legacy given the wife is not a reduction into possession; and a decree or judgment would not, sua vi, transfer it to the husband, for the wife surviving would be entitled to it.—*Knight v. Brawner*, 14 Md. 1.

(e) The executor of a deceased husband cannot maintain a suit on a chose in action which accrued during coverture to the wife of deceased, who survived him, and which was not reduced into possession by him.—*Bond v. Conway*, 11 Md. 512.

(f) Choses in action of a wife, not reduced to possession by the husband in his lifetime, survive to her.—*Bond v. Conway*, 11 Md. 512.

(g) If real estate of a wife is sold and notes given therefor payable to her, the receipt of money on those notes by the husband is a sufficient reduction to possession to make the amount liable for the debts of the husband; and even before the money is paid, the notes having been given and the property changed in its character from real to personal, the husband may sue upon them in his own name, and they are liable for his debts.—*Taggart v. Boldin*, 10 Md. 104.

(h) The receipt by a husband of money due on notes given to the wife for the purchase money of her real estate is such a reduction into possession and conversion to his use as to make it liable to the claims of his creditors.—*Taggart v. Boldin*, 10 Md. 104.

(i) By virtue of a power of attorney given by the wife to her husband to collect her share of an intestate's property in another state, with power to sue, etc., and also to create other attorneys, the money was collected by an attorney so appointed by the husband, three days before his death. Held,

that, the collection by the attorney was a reduction into possession of the wife's chose in action, and, whether the attorney was acting for the wife or for the husband, the property belonged to the husband's estate.—*Turton v. Turton*, 6 Md. 375.

(j) If a husband and wife authorize a third person to receive her chose in action, and he does receive it, her right by survivorship is gone, though it never reaches the possession of the husband.—*Turton v. Turton*, 6 Md. 375.

(k) A testator devised his lands to his executors to be sold, and gave a legacy of \$2,000 to his niece, to be paid to her out of the proceeds of the sale of his real estate. *Held*, that, the surviving husband of the niece had the same title to demand this legacy bequeathed to his wife as if it had been payable out of the personal estate of the testator, and that it made no difference whether the wife died before or after the sale actually took place.—*Thomas v. Wood*, 1 Md. Ch. 296; *Wood v. Thomas*, *Id.*

(l) A legacy to a married woman was paid over by the executor to her husband on his promise to invest the same for her. He failed to so invest it, and at his death his estate was found insufficient to pay all his debts; and the widow who was also administratrix, claimed to retain the amount of the legacy as a debt due her from her husband's estate. *Held*, that, on the death of the husband, the widow had a right to elect to consider him as her debtor to the amount of the legacy as so much money had and received to her use.—*State v. Reigart*, 1 Gill 1, 39 Am. Dec. 628. [*Cited and annotated in* 53 L. R. A. 359, on moral obligation as consideration; in 26 L. R. A. (N. S.) 522, on moral obligation as consideration for express promise.]

(m) Where a deed of slaves was made by a father to his daughter, to take effect after his death, and the father died after the daughter's coverture, and her husband died after the father, without reducing the slaves to his possession, or attempting to, they passed to his wife's heirs.—*Bohn v. Headley*, 7 H. & J. 257. [*Cited and annotated in* 21 L. R. A. 695, 696, on undelivered written transfer or assignment of property as gift.]

## § 12.— Wife's equity to a settlement.

(a) A husband received his wife's share of her father's personal estate prior to the adoption of the Code 1860, art. 45, §§ 1, 2, and used it to purchase land in his own name under a promise to her, before the purchase, that the money should be so applied and treated as a loan to him. *Held*, that the husband was entitled in his own right to receive the proceeds of such personal estate, and any promise or engagement to pay it to his wife was a mere voluntary promise, without consideration, and constituted no ground of claim against him or his estate.—*Oswald v. Hoover*, 43 Md. 360. (See Code 1911, art. 45, §§ 1-4; *Id.* [vol. 3], art. 45, § 4.)

(b) The undivided ninth part of a parcel of land was inherited by a married woman previous to her marriage, and the same was partitioned during the lifetime of the husband and wife; and out of the wife's share in the proceeds of sale an allowance was made to the husband in lieu of his interest as tenant by the curtesy initiate. The trustees were directed by the court to invest the sum so allowed to the husband, and to pay to the wife the interest thereon during her life, and, after her death, to pay the principal sum to certain creditors of the husband on whose petition the order was passed. *Held*, that, the wife was not entitled to an allowance or settlement out of said sum.—*Hoffman v. Rice*, 38 Md. 284.

(c) When a husband has resorted to a court of equity to reduce into possession a chose in action of his wife, he must submit to such conditions as the court shall impose; and the court will make suitable provision for the wife out of the subject-matter.—*Norris v. Lantz*, 18 Md. 260.

(d) The wife's rights to provision for support depend on considerations and principles entirely distinct from those controlling her rights by survivorship.—*Norris v. Lantz*, 18 Md. 260.

(e) A wife, living separate from her husband, without his consent and without justifiable cause, cannot be allowed maintenance out of her legal estate which she inherited and was seised and possessed of at the time of the marriage.—*Schindel v. Schindel*,

12 Md. 294. [Cited and annotated in 49 L. R. A. (N. S.) 91, on right of wife in fault for separation to separate maintenance.]

(f) Where a husband has applied for the benefit of the insolvent laws, a court of equity will not interfere to compel a reasonable allowance for the support of the wife from her legal choses in action, which can be reduced to possession by the husband, or his trustee in insolvency, in an action at law.—*Wiles v. Wiles*, 3 Md. 1, 56 Am. Dec. 733.

(g) Where a husband or his assignee applies to a court of equity to obtain possession of the wife's property, the court will require him to do what is equitable, by making a suitable provision out of it for her and her children; and, if the fund be already under the control of the court, she may proceed by original bill.—*Wiles v. Wiles*, 3 Md. 1, 56 Am. Dec. 733.

(h) Whenever a husband can come at the estate of the wife without the aid of a Court of Chancery, that court cannot interfere in her behalf.—*Wiles v. Wiles*, 3 Md. 1, 56 Am. Dec. 733.

(i) When the aid of a court of equity is invoked to enable the husband, or the assignee of the husband for value or by operation of law, to get possession of the wife's property, the court will take care that a suitable provision is made out of the fund for the maintenance of the wife and her children, and that according to circumstances the whole, or a part only, will be settled on her for that purpose.—*Hall v. Hall*, 4 Md. Ch. 283.

(j) Where the personal estate of the wife is under the control of a court of equity, or when its aid is necessary to enable the husband to obtain possession of it, the court will provide out of it an adequate maintenance for the wife and her children, and what will be considered adequate depends on the circumstances of each case. If the husband be insolvent, the family numerous, and the personal estate of the wife small, the whole will be settled on her and her children.—*McVey v. Boggs*, 3 Md. Ch. 94.

(k) Though no separation has taken place, and the parties are living together in harmony, if the husband is found to be utterly insolvent, she will be entitled, on the ground

of the "wife's equity," to a present provision.—*Helms v. Franciscus*, 2 Bland 544, 20 Am.

Dec. 402. [Cited and annotated in 23 L. R. A. 754, on inheritance by, through, or from, illegitimate persons; in 12 L. R. A. (N. S.) 851, on validity of agreement between spouses renouncing marital rights; in 38 L. R. A. (N. S.) 951, 962, 963, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce; in 41 L. R. A. (N. S.) 576, on denial of custody of child to parent for its well-being.]

(l) Where an agreement of separation was fairly entered into by husband and wife, by which they declared their marriage contract void and the husband released to the wife all his interest and claim in and to a legacy bequeathed to her, and then left her in a destitute situation, he being utterly insolvent, it was held, that, though such agreement was void so far as it declared the marriage contract a nullity, yet it was valid in respect to the consent of the husband that the wife should have the whole of the legacy to her, and the whole was decreed to be settled upon her and her children, including an illegitimate child born before her marriage.—*Helms v. Franciscus*, 2 Bland 544, 20 Am. Dec. 402. [Cited and annotated, see supra.]

(m) By the agreement of separation the wife recognized the claims of certain other persons to whom portions of the legacy had been assigned. Held, that it was competent for her to release her "equity," and that such assignees were entitled to take under their assignments.—*Helms v. Franciscus*, 2 Bland 544, 20 Am. Dec. 402. [Cited and annotated, see supra.]

(n) Where a husband has illtreated his wife, and separated himself from her, leaving her in a destitute situation, a court of equity will make a suitable settlement on her out of a legacy bequeathed to her.—*Helms v. Franciscus*, 2 Bland 544, 20 Am. Dec. 402. [Cited and annotated, see supra.]

(o) The whole of the wife's property will not, in general, be settled on her, except in cases where she is the ward of the court, being an infant, and has been brought before it for the purpose of having her person or estate disposed of.—*Helms v. Franciscus*, 2 Bland 544, 20 Am. Dec. 402. [Cited and annotated, see supra.]

(p) It is competent for the husband to consent that the whole estate of the wife be settled on her, and in such case the court will so decree.—*Helms v. Franciscus*, 2 Bland 544, 20 Am. Dec. 402. [Cited and annotated, see *supra*.]

(q) A court of equity will not aid a husband to reduce the choses in action of the wife into possession, except upon terms which provide for the support of the wife and her children. Much less will it exert its power to effect the application of such choses in action to the payment of the husband's creditors, and thus deprive the wife, surviving the husband, of the right given her at law of being reinvested with all the choses in action not reduced into possession by the husband during coverture.—*Mann v. Higgins*, 7 Gill 265.

(r) A legacy left by will to a married woman, to her separate use, was paid over by the executors to her husband on his promise to invest it for her; but he did not do so, and at his death his estate was found not sufficient to pay all his debts. His widow, who was also administratrix jointly with another, claimed to retain the amount of the legacy as a debt due to her from her husband's estate. Held, that, the executors had a right to require such a promise from the husband; that it was founded on a sufficient consideration, and was one which a court of equity would enforce; and that his widow had a right to elect to consider him as her debtor to the amount of the legacy as so much money had and received to her use.—*State v. Reigart*, 1 Gill 1, 39 Am. Dec. 628. [Cited and annotated in 53 L. R. A. 359, on moral obligation as consideration; in 26 L. R. A. (N. S.) 522, on moral obligation as consideration for express promise.]

(s) Where a legacy to a woman, not limited to her separate use, has been brought into chancery by the assent of the legatee after her intermarriage, it may be withdrawn, on the petition of the husband and wife, without any part being settled on the wife.—*Ex parte Warfield*, 11 G. & J. 23.

(t) In decreeing an equitable settlement to a wife, the court should be guided by the antenuptial agreement if there be one, and if there be no such agreement the settlement should conform to the equity of the wife,

unless she waived the same in the accustomed mode.—*Groverman v. Diffenderffer*, 11 G. & J. 15.

(u) Where the husband seeks by bill in chancery to recover money due to his wife, the equity of the wife to a settlement is unquestionable; and, in such cases, it is the invariable practice to include a provision for the issue of the marriage.—*Groverman v. Diffenderffer*, 11 G. & J. 15.

(v) The settlement, by a decree, of a married woman's estate to her separate use for life, with remainder to her children, is no ground for the impeachment of the decree, but a very strong circumstance in its favor. Such a settlement is always made by a court of equity where its powers over the matter are brought into action by the husband's seeking the recovery of his wife's property through its aid.—*Berrett v. Oliver*, 7 G. & J. 191.

(w) Where the personal estate of a feme covert, which has fallen to her during coverture, is in a course of distribution in a court of equity, she may assert her claim to a provision out of it, as against her husband or his assignee, by a petition, after an order of the court for the distribution of the fund, before it is paid over. This will be considered as substantially an exception to the auditor's report, distributing the fund from which she claims payment, and under the order nisi usually passed upon petitions against funds in court.—*Duvall v. Farmers Bank*, 4 G. & J. 282, 23 Am. Dec. 558.

(x) In England, the wife's equity to a provision out of her personal estate, which the husband cannot reach without the aid of a court of equity, is founded on the principle that, seeking the intervention of that court, he must do equity. It existed when he was forbidden to alienate all his personal property from her by will, and is not affected by the laws of Maryland, which secure to her one-third of his personal estate, after the payment of his debts, against any testamentary disposition by him.—*Duvall v. Farmers Bank*, 4 G. & J. 282, 23 Am. Dec. 558.

(y) A wife's equity to a provision out of her personal estate, in a course of distribution in chancery, exists, although there has



been an assignment by her husband for a valuable consideration; and the assignee, standing in his place and seeking to withdraw the funds, will be compelled to make the provision.—*Duvall v. Farmers Bank*, 4 G. & J. 282, 23 Am. Dec. 558.

(z) The character and extent of the provision to which a wife is entitled out of her personal estate, as against her husband, seeking the aid of a court of equity to reach it, seems to be governed in every case by its peculiar circumstances, and to be regulated by the amount of her fortune, and what the husband may already have received.—*Duvall v. Farmers Bank*, 4 G. & J. 282, 23 Am. Dec. 558.

(aa) Where the aid of a court of equity is necessary to enable the husband to obtain possession of his wife's personal property, he must do what is equitable, by making a suitable provision out of it for her maintenance and that of her children.—*Duvall v. Farmers Bank*, 4 G. & J. 282, 23 Am. Dec. 558.

### § 13.—Rights of husband's creditors.

#### Cross-References.

As to debts due wife as sole trader, see post, § 99.

Wife's separate property, see post, § 149.

(a) Under Const. art. 3, § 43, declaring that "the property of the wife shall be protected from the debts of the husband," land held by husband and wife as tenants by the entirety cannot be subjected to the payment of a mortgage executed by the husband.—*McCubbin v. Stanford*, 85 Md. 378, 37 Atl. 214, 60 Am. St. Rep. 329.

(b) Where land of an intestate has been sold by commissioners who hold the proceeds for distribution among the heirs, the sale having been confirmed, a creditor of the husband of one of the heirs may attach the proceeds to satisfy his debt, since the husband would be entitled to sue and recover the same in his own name.—*State v. Krebs*, 6 H. & J. 31. [Cited and annotated in 29 L. R. A. 93, on bailee's liability for servant's wrongful appropriation.]

### § 14. Conveyances to husband and wife.

#### Cross-References.

See ante, § 13.

Conveyance by husband to wife of estate by entirety, see post, § 47.

Conveyances, contracts, and other transactions between husband and wife, see post, §§ 36-54.

Separate property of wife, see post, § 119.

Conveyance to "husband, wife, and children," see "Deeds," § 136.

Effect of divorce on title to property conveyed to husband and wife, see "Divorce," § 316.

Effect of partition deed to husband and wife, see "Partition," § 8.

Estoppel of heirs of wife to contest title of surviving husband under defective partition deed, see "Estoppel," § 93.

Right of action for trespass, see "Trespass," § 29.

#### Annotation.

Tenancy by the entireties.—30 L. R. A. 306, note.

(a) Where a husband and wife did business in their joint names, though all the property belonged to her, and he never claimed any interest in accounts charged against their children as advancements made by her, that the charges were entered in a book in the names of the husband and wife did not establish a tenancy by the entirety in them.—*Temple v. Bradley*, 119 Md. 602, 87 Atl. 394.

(b) Where land was conveyed to a husband and wife jointly as tenants by the entirety, the title to the entire property vested in the wife subject to being divested in favor of her husband on her prior death.—*Stieff Co. v. Ullrich*, 110 Md. 629, 73 Atl. 874.

(c) J. had a deposit in the K. bank in his own name changed to the joint account of his wife, E. J., so that either could draw it on indorsing the certificates. Subsequently, during J.'s life, his wife indorsed the certificates to the F. bank for collection, and took a certificate of deposit reading, "Received of J. and E. J. \$1,981, which sum will be paid to them or their order." Held, that, the certificate created an estate by the entirety, and hence the wife was entitled to the deposit on the death of the husband, by right of survivorship.—*Brewer v. Bowersox*, 92 Md. 567, 48 Atl. 1060.

(d) By a conveyance by a husband and wife, "for the purpose of creating a joint tenancy in" them, to a third person, who immediately reconveyed it to the said husband and wife "as joint tenants, and not as tenants in common, the survivor of them, and the heirs, personal representatives, and assigns of such survivor," held, that, the

husband and wife became joint tenants of the property so conveyed to them.—*Fladung v. Rose*, 58 Md. 13. [Cited and annotated in 30 L. R. A. 322, on tenancy by the entireties.]

(e) A conveyance to a husband and wife, as such, creates an estate of entirety, and does not make them joint tenants or tenants in common. Neither can alien without the consent of the other, and the survivor takes the whole.—*Marburg v. Cole*, 49 Md. 402, 33 Am. Rep. 266. [Cited and annotated in 30 L. R. A. 306, 314, 316, on tenancy by the entireties.]

(f) A leasehold interest was conveyed to a husband and wife. The reversion was afterwards conveyed to the husband alone, "to be held by him, his heirs and assigns, in fee simple," that the rent might "cease and determine," and for "the purpose of extinguishing the ground rent" reserved in the lease. Held, that, in absence of proof to sustain a separate estate in the wife according to the acts on that subject, the marital right of the husband to extinguish the leasehold interest was unquestionable, and that the conveyance to him of the reversion had that effect.—*Lawes v. Lumpkin*, 18 Md. 334.

(g) Under act 1822, c. 162, providing that no deed shall be considered to create an estate in joint tenancy, unless in such deed it is expressly provided that the property thereby conveyed is to be held in joint tenancy, a deed to a husband and wife, and to their heirs and assigns, forever, and to the survivor of them, does not create a joint tenancy.—*Craft v. Wilcox*, 4 Gill 504. (See Code 1911, art. 50, § 13.) [Cited and annotated in 30 L. R. A. 321, on tenancy by the entireties.]

(h) A grant to A. and B., his wife, "to have and to hold the granted premises during the lives of the said A. and B.," vests a joint estate in them during their lives, and on the death of the husband, leaving the wife, the whole devolves on her during her life.—*Hannan v. Towers*, 3 H. & J. 147, 5 Am. Dec. 427. [Cited and annotated in 30 L. R. A. 324, on tenancy by the entireties.]

### § 15. Conveyances by husband and wife.

#### Cross-References.

See ante, § 6.

As revocation of marriage settlement, see post, § 33.

Conveyance by husband to or for wife, see post, § 47.

Conveyance by wife to or for husband, see post, § 48.

Of community or separate property, see post, §§ 267, 273.

Acknowledgment by attorney in fact of chattel mortgage by husband and wife, see "Acknowledgment," § 11.

As color of title, see "Adverse Possession," § 81.

Conveyance by husband owning fee and wife holding a ground rent as conveying ground rent, see "Ground Rent," § 3.

Conveyance of life estate, right to cut timber, see "Life Estates," § 13.

Joinder of wife in transfer or incumbrance of homestead, see "Homestead," § 118.

Parol agreement by husband and wife to convey homestead, see "Frauds, Statute of," § 72.

Refusal of wife to join in conveyance, effect on right of broker to commissions, see "Brokers," § 61.

#### Annotation.

Effect of one spouse joining in the execution of the other's deed or mortgage, to convey the former's separate property included therein.—28 L. R. A. (N. S.) 289, note.

Disposition or encumbrance by both spouses of property held by the entireties.—30 L. R. A. 327, note.

Operation and effect of conveyance in which a wife joins with her husband.—22 L. R. A. 782, note.

(a) Under act 1715, c. 47, and act 1766, c. 14, covenants of warranty contained in a married woman's deed do not estop her from setting up an after-acquired title.—*Preston v. Evans*, 56 Md. 476. (See Code, art. 45, § 4; Id. [vol. 3], art. 45, § 4.) [Cited and annotated in 22 L. R. A. 781, on effect of covenants of married women and their estoppel by deed or mortgage.]

(b) A husband and wife executed a mortgage on real estate owned by them jointly, which mortgage was not properly acknowledged. Subsequently they executed a mortgage on the same land to another person, which, being duly acknowledged, was decided to have priority over the former. Both mortgages were given to secure debts due from the husband. Held, that, the surplus proceeds of the sale of the property under the mortgage having priority, and which more than exhausted the husband's interest therein, belong to the wife.—*Johns v. Rear-don*, 11 Md. 465.

(c) The separate interest of a feme covert in land owned equally by her husband and herself can only be conveyed by such an instrument in such form as the Legislature has required, and a defect in the acknowledgment renders it entirely inoperative.—*Johns v. Reardon*, 11 Md. 465.

(d) A married woman is estopped by her deed.—*Morris v. Harris*, 9 Gill 19. [Cited and annotated in 57 L. R. A. 333, 334, on effect of partition deed.]

(e) Under act 1766, c. 14, if the interest of a married woman was to be conveyed or barred, she must join with her husband in the conveyance which is purported to pass the interest intended to be transferred.—*Lawrence v. Heister*, 3 H. & J. 371. (See Code 1911, art. 45, § 4; *Id.* [vol. 3], art. 45, § 4.)

#### § 16. Possession between husband and wife.

##### Cross-References.

See ante, § 6.

Adverse possession by or against married woman, see post, § 69½.

Possession by husband of wife's separate property, see post, § 136.

#### § 17. Contracts with third persons in general.

##### Cross-References.

Contracts relating to wife's separate property, see post, § 154.

Rights of action, see post, §§ 208, 213.

(a) Although a duebill executed by a married woman jointly with her husband may not be a formal negotiable instrument, containing an express promise to pay, it is sufficient to found an action against her, under the act of 1872, c. 270.—*Wilderman v. Rogers*, 66 Md. 127, 6 Atl. 588. (See Code. art. 45, §§ 1-5; *Id.* [vol. 3], art. 45, § 4.)

(b) On a contract, made by a husband for himself and his wife, that his wife should perform at the theater of the manager named therein during a certain period, for a certain salary, a court of equity will not enjoin the wife from performing at any other theater during the same period.—*Burton v. Marshall*, 4 Gill 487, 45 Am. Dec. 171. [Cited and annotated in 20 L. R. A. 168, on power to grant mandatory injunctions; in 6 L. R. A. (N. S.) 1133, 1137, on enforcement of contract of service by equity.]

(c) A contract, by a husband for himself and wife, that his wife should perform at a theater for a certain period, will not be specifically enforced against the husband or wife.—*Burton v. Marshall*, 4 Gill 487, 45 Am. Dec. 171. [Cited and annotated, see supra.]

#### § 18. Antenuptial debts of wife.

(a) The husband of a minor is responsible for board and necessities furnished to her after the death of her father, and previous to her marriage, at her request and on her promise to pay for them. The contract, being for necessities, is binding on her, although she was a minor; and, being a subsisting debt at the time of her marriage, the husband became responsible therefor on the marriage.—*Anderson v. Smith*, 33 Md. 465. (But see Code, art. 45, § 14.)

(b) An action against husband and wife, founded on the note of the wife, made by her while sole in Louisiana, is not barred by her release before marriage, and after the maturity of her note, under the insolvent laws.—*Nelson v. Bond*, 1 Gill 218.

(c) An administratrix took possession of slaves belonging to the intestate's children, and held and claimed them as her own; and, while the children were minors, she married again, and the husband held and used the property till her death, and from that time until the time of the decree. Held, that he was responsible only from the time of his marriage.—*Chaney v. Smallwood*, 1 Gill 367.

#### § 19. Necessaries and family expenses.

##### Cross-References.

Admissibility of evidence in action for necessities, see post, § 232.

Contracts by wife, see post, § 83.

Instructions in actions for necessities, see post, § 235.

Judgment in actions for necessities, see post, §§ 238, 239.

Liabilities of wife's separate estate, see post, § 151.

Presumptions and burden of proof in action for necessities, see post, § 232.

Questions for jury in actions for necessities, see post, § 235.

Right of action against husband or wife or both, see post, § 213.

Weight and sufficiency of evidence in action for necessities, see post, § 232.

Claims against estate of deceased husband, see "Executors and Administrators," § 202.

Liability of husband as administrator of wife's estate, see "Executors and Administrators," § 109.

Liability of husband for necessities furnished insane wife, see "Insane Persons," § 53.

Liability of insane husband, see "Insane Persons," § 75.

Liability of wife's estate, see "Executors and Administrators," § 205.

#### Annotation.

Liability of husband for necessities furnished wife while living with husband.—65 L. R. A. 529; 47 L. R. A. (N. S.) 279, notes.

Presumptive agency arising from cohabitation.—65 L. R. A. 539; 47 L. R. A. (N. S.) 281, notes.

Liability of husband, by reason of estoppel or ratification, for wife's purchases, upon his credit, of articles for personal use.—65 L. R. A. 549; 47 L. R. A. (N. S.) 282, notes.

Liability of husband for funeral expenses and medical attendance during wife's last sickness.—47 L. R. A. (N. S.) 283, note.

Liability of married woman for necessities purchased by her.—33 L. R. A. (N. S.) 426, note.

What constitute "family expenses" within statute rendering wife or her property liable therefor.—21 L. R. A. (N. S.) 277; 32 L. R. A. (N. S.) 941, notes.

Liability of wife for family expenses as affected by act of husband.—3 L. R. A. (N. S.) 145, note.

Implied liability of wife for family expenses; rules in various states.—15 L. R. A. 717, note.

(a) Under Code 1904, art. 45, § 21, providing that nothing in the article shall be construed to relieve the husband from liability for necessities of the wife, a husband is liable for the expenses of the last illness and burial of his wife.—*Stonesifer v. Shriver*, 100 Md. 24, 59 Atl. 139. (See Code 1911, art. 45, § 21.) [Cited and annotated in 47 L. R. A. (N. S.) 283, on liability for necessities furnished wife living with husband.]

(b) Where goods are sold to a wife on the credit of the husband, and with his authority, knowledge, and consent, he is liable.—*Jones v. Gutman*, 88 Md. 355, 41 Atl. 792. [Cited and annotated in 65 L. R. A. 536, 543, 547, 549, 550, on husband's liability for necessities furnished wife living with him.]

(c) Whether a wife was authorized by a husband to purchase goods on his account depends on all the circumstances, and should not be decided in the negative on the sole ground that he had instructed her to get the goods at a different place.—*Jones v. Gut-*

*man*, 88 Md. 355, 41 Atl. 792. [Cited and annotated, see supra.]

(d) A widow may not maintain an action against her husband's administrator for fees charged by her counsel for conducting her suit of divorce, pending which the husband died; but the counsel may maintain such action on affirmative proof that the divorce suit was justifiable.—*McCurley v. Stockbridge*, 62 Md. 422, 50 Am. Rep. 229. [Cited and annotated in 24 L. R. A. 630, 631, on liability for legal services to wife in divorce suit.]

(e) Where a husband and wife entered into a separation agreement, by which provision for the support of the wife was made, the husband is not liable for necessities furnished the wife so long as he complies with the obligations of the agreement.—*Brown v. Brown*, 5 Gill 249.

### § 20. Agency of wife for husband.

#### Cross-References.

Capacity of married woman to act as agent in general, see post, § 59.

Questions for jury, see post, § 235.

As affecting competency of wife as witness for or against husband, see "Witnesses," § 56.

Authority to enter appearance, see "Appearance," § 3.

For purpose of receiving telegrams, see "Telegraphs and Telephones," § 37.

Knowledge by wife of vicious propensities of animal, see "Animals," § 70.

### § 21.— In general.

(a) Receipts of rent by the wife of an administrator, she being a legatee under the will, are the receipts of the administrator; she being his agent pro tanto.—*Smith v. Stockbridge*, 39 Md. 640.

### § 22.— Property of husband.

#### Cross-References.

Construction of power of attorney from husband to wife in general, see "Principal and Agent," § 103.

Purchase of land at tax sale, see "Taxation," § 674.

### § 23.— Contracts.

(a) A wife, living separate from her husband, cannot be regarded as his agent, and has no authority to bind him by any contract, except for necessities.—*Schindel v. Schindel*, 12 Md. 108.

### § 23½.— Ratification or repudiation of agency.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 23¾.— Evidence of agency.

#### Cross-Reference.

Declarations or statements of wife as to agency, see "Principal and Agent," § 22.

(a) Evidence that plaintiff was prevented from completing contract by defendant's wife held competent.—*Meyer v. Frenkil*, 116 Md. 411, 81 Atl. 208, Ann. Cas. 1913C, 875.

§ 24. (Omitted from the classification used herein.)

### § 25. Agency of husband for wife.

#### Cross-References.

Agency of husband of sole trader, see post, § 99.

As to wife's separate property, see post, §§ 138, 146.

Capacity of married woman to appoint agent, attorney, or trustee in general, see post, § 58.

Acts interrupting adverse possession, see "Adverse Possession," § 50.

Acts rendering property subject to municipal taxation, see "Municipal Corporations," § 966.

Admissions as to advancements, see "Descent and Distribution," § 111.

Amendment showing agency on appeal from justice's court, see "Justices of the Peace," § 174.

As affecting competency of husband as witness for or against wife, see "Witnesses," § 56.

Delivery of goods of wife to husband by carrier, see "Carriers," § 82.

Employment of husband fraudulent as against his creditors, see "Fraudulent Conveyances," § 104.

Estoppel of wife to dispute act of husband as to claim of boundary, see "Boundaries," § 47.

Knowledge of husband as affecting bona fides of alleged preferential transfer to wife, see "Bankruptcy," § 166.

Liability as undisclosed principal, see "Principal and Agent," §§ 145, 146.

Negligence of husband causing injury to third person, see "Negligence," § 54.

Service of notice of public improvements, see "Municipal Corporations," § 294.

Signing petition for municipal improvements, see "Municipal Corporations," § 292.

Waiver of defects in tax bill, see "Taxation," § 555.

#### Annotation.

Proof of husband's agency for wife by evidence of similar acts by husband.—17 L. R. A. (N. S.) 223, note.

## II. MARRIAGE SETTLEMENTS.

#### Cross-References.

Antenuptial conveyances in fraud of wife, see ante, § 6.

Liability of husband for antenuptial debts, see ante, § 18.

Antenuptial contracts to devise or bequeath, see "Wills," § 60.

Application of statute of frauds, see "Frauds, Statute of," §§ 4, 56.

As renunciation of right to administer estate of deceased spouse, see "Executors and Administrators," § 19.

As renunciation of testamentary provisions, see "Wills," § 784.

Bar of curtesy, see "Curtesy," § 11.

Bar to or release of dower, see "Dower," §§ 40-42, 58.

Bar to or release of right of inheritance, see "Descent and Distribution," § 62.

Bar to or waiver of allowance from estate of deceased husband, see "Executors and Administrators," § 185.

By bankrupt, see "Bankruptcy," § 181.

Cancellation, see "Cancellation of Instruments."

Effect of divorce on rights of parties, see "Divorce," § 322.

Specific performance, see "Specific Performance," §§ 28, 82.

Testimony as to transactions with persons since deceased in action for cancellation, see "Witnesses," §§ 135, 150.

Validity as to creditors, see "Fraudulent Conveyances," §§ 94, 95.

Validity of settlement made on Sunday, see "Sunday," § 11.

### § 26. Nature in general.

### § 27. Statutory provisions.

### § 28. Requisites and validity.

#### Cross-References.

Application of statute of frauds, see "Frauds, Statute of," §§ 4, 56.

Validity as to creditors, see "Fraudulent Conveyances," § 94.

Validity of settlement made on Sunday, see "Sunday," § 11.

### § 29.— Antenuptial settlements.

#### Annotation.

Waiver of right to widow's allowance by antenuptial agreement.—25 L. R. A. (N. S.) 751, note.

Validity of antenuptial contract by one party to support the other.—15 L. R. A. (N. S.) 491, note.

Validity of contract relinquishing rights in intended husband's estate, signed by intending wife in ignorance of her legal rights.—9 L. R. A. (N. S.) 953, note.

(a) The consideration of marriage not only sustains covenants in favor of the wife and the issue of the marriage, but also covenants for settlements in favor of children of a former marriage, as a moral consideration. The children are regarded as purchasers, and may enforce the obligations of the contracting parties, notwithstanding the non-performance of mutual stipulations on the other side, unless they are conditional and

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

dependent covenants.—*Michael v. Morey*, 26 Md. 239, 90 Am. Dec. 106.

(b) A husband and wife by an antenuptial contract agreed that neither would claim, during the marriage or after the death of the other, any interest whatever in the property of the other. *Held*, that the agreement cannot be avoided for want of consideration, since either the reciprocal stipulations of the contract or the proposed marriage would constitute a consideration in every way sufficient to render the contract valid and binding.—*Naill v. Maurer*, 25 Md. 532. [Cited and annotated in 17 L. R. A. (N. S.) 866, on power to bar dower by antenuptial agreement not conforming to any statutory method.]

(c) An antenuptial settlement made in consideration of marriage, is good, even though the party be then indebted.—*Betts v. Union Bank*, 1 H. & G. 175, 18 Am. Dec. 283. [Cited and annotated in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

### § 30.—Postnuptial settlements.

#### Cross-References.

By bankrupt, see "Bankruptcy," § 181.

Validity as to husband's creditors, see "Fraudulent Conveyances," § 95.

#### Annotation.

Postnuptial written contract to confirm antenuptial oral contract relinquishing rights in property.—11 L. R. A. (N. S.) 593, note.

(a) A married woman, being entitled to a distributive share of the proceeds of the real estate of her father, sold her share with the consent of her husband, and took a note of the purchaser for the purchase money. The husband collected the note as a loan by his wife to him, on an agreement with her to repay it to her, with interest, and give her his note for the amount due. Afterwards the husband, becoming embarrassed, in order to protect his wife's claim, paid two judgments against him and caused them to be entered to her use. *Held*, that the husband did not reduce the chose in action of his wife to his possession by virtue of his marital rights; but, in pursuance of his agreement, his wife obtained control of the note, and such agreement to repay her the amount he collected on it was founded on an adequate consideration.—*Drury v. Briscoe*, 42 Md. 154. [Cited and annotated in 26 L. R.

A. (N. S.) 522, on moral obligation as consideration for express promise.]

(b) The act by which a husband divests himself of his property and creates a separate estate in his wife must be clear and unequivocal.—*Taggart v. Boldin*, 10 Md. 104.

(c) A postnuptial marriage settlement, made in pursuance of a valid agreement before marriage, is valid.—*Brooks v. Dent*, 1 Md. Ch. 523. [Cited and annotated in 6 L. R. A. (N. S.) 383, on trust by husband's investing wife's separate property in realty in own name.]

### § 31. Construction and operation.

#### Cross-References.

Postnuptial settlement or separation agreement, see post, § 278.

As renunciation of right to administer estate of deceased spouse, see "Executors and Administrators," § 19.

As renunciation of testamentary provisions, see "Wills," § 784.

Bar of curtesy, see "Curtesy," § 11.

Bar to or release of dower, see "Dower," §§ 40, 42, 58.

Bar to or release of right of inheritance, see "Descent and Distribution," § 62.

Bar to or waiver of allowance from estate of deceased husband, see "Executors and Administrators," § 185.

Effect of divorce on rights of parties, see "Divorce," § 322.

Effect on right to alimony, after divorce, see "Divorce," § 236.

Equity jurisdiction of action to construe, see "Equity," § 28.

(a) A deed executed in contemplation of marriage conveyed certain property in trust, the grantor to be permitted to receive the income and profits to her separate use during life, and to dispose of the same by deed and will, and, failing to do so, the same should be held for her children or their descendants, if she left any, and, if not, for her heirs at law. *Held*, that the intention of the grantor to carry the title to the property beyond her life, and to exclude the husband, was plainly manifest, and he was not entitled to any interest therein.—*Moody v. Hall*, 61 Md. 517.

(b) By an antenuptial settlement it was covenanted that the wife should receive at the husband's death one dwelling house, absolutely, in lieu of dower and all other interest in his estate. Shortly before his death the husband became estranged from his wife, and so left her by will only a leasehold dwelling house of small value and incumbered, in-

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

stead of a more valuable house which he had designed for her, and gave his entire estate of about \$100,000 to others. *Held*, that the widow might renounce the provision of the will and demand, under the settlement, a house suitable to his fortune and position in society, or a sum of money equivalent to the value of such house.—*Bussey v. McCurley*, 61 Md. 436, 48 Am. Rep. 117.

(c) By an antenuptial contract in consideration of the proposed marriage, and of all money, choses in action, book accounts, and other personal property of the wife thereby made over to the husband, the husband bound himself, his heirs, and executors, "in the event of his surviving his wife, to pay a certain sum of money to any child or children which she may leave, and, in the event of leaving more than one child, to distribute and pay the said sum of money equally among all, share and share alike." *Held*, that the issue of a former marriage should be included under the terms of the contract.—*Michael v. Morey*, 26 Md. 239, 90 Am. Dec. 106.

(d) Although the defaulting party to an antenuptial contract may not be allowed to enforce the articles specifically, children are entitled to all the benefit of the uses under the settlement.—*Michael v. Morey*, 26 Md. 239, 90 Am. Dec. 106.

(e) In an antenuptial agreement, a wife assigned to her husband a certain sum, he covenanting to pay interest to her annually to her sole use, and she retaining power to dispose of the capital sum and the interest due thereon at her death by will as if she were a feme sole, and in default of appointment by will to go to her children. *Held*, that the husband took the legal estate, bound by the trust and subject to the power of appointment by will as set forth in the agreement.—*Mory v. Michael*, 18 Md. 227. [Cited and annotated in 64 L. R. A. 876, on execution by will, of power of appointment.]

(f) A marriage settlement conveyed certain personal property to a trustee for joint use, and on the death of the wife to the use of her appointees, or, in default of appointment, then to the use of the wife, her heirs and assigns, forever. *Held*, that on the death of the wife without appointment, leav-

ing issue, the trust continued; the issue taking only an equitable title.—*Denton v. Denton's Ex'rs*, 17 Md. 403.

(g) Where by antenuptial settlement slaves are conveyed to a trustee in trust for the wife, the husband, on the death of the wife, is entitled, as against the representatives of the wife, to the children born of such slaves during the coverture.—*Townshend v. Matthews*, 10 Md. 251.

(h) A settlement in trust of leasehold estates "for the sole and separate use" of a feme covert, "her executors, administrators, and assigns," for her either "to receive the rents, income," etc., "or proceeds in case of sale," and apply them "as if she were a feme sole, so that neither the said trust estate and property, nor the rents, issues, income, or proceeds thereof, should at any time be subject to the power, disposal, or control" of her husband, or be subject to his debts, and, in case of intestacy, to those who would "take an estate in fee simple by descent," carries the title of the property beyond the period of the wife's death, and excludes the surviving husband.—*Waters v. Tazewell*, 9 Md. 291. [Cited and annotated in 49 L. R. A. (N. S.) 620, on provision in restraint of marriage as a condition or limitation; in 15 L. R. A. 303, on who are "next of kin."]

(i) A married woman cannot exercise any power over her separate estate under marriage settlement but such as is specially given, and it must be exercised in the mode prescribed.—*Tarr v. Williams*, 4 Md. Ch. 68.

(j) If property was settled on a wife by her first husband for her separate, sole, and exclusive use, and free from any control of the husband, with absolute power to dispose of it by deed or by will, the settlement will be operative against the marital rights of a second husband.—*Cole v. O'Neill*, 3 Md. Ch. 174.

(k) By a marriage settlement, the property of the wife was conveyed to trustees for the benefit of the wife during coverture, free from the control, and not liable to the debts, of the husband, with power to the wife to dispose of the same either by last will and testament in writing, or by any other writing signed by her hand in presence of two witnesses. The wife died without making any

disposition of the property whatever. *Held*, that the contract did nothing more than suspend the marital rights of the husband during the life of the wife, and on her death the property remained in the same condition that it would have been in if no such power of appointment had been created, and consequently the rights of the husband revived on her death.—*Jones v. Brown*, 1 Md. Ch. 191.

(l) Where it is intended, in a marriage settlement, to exclude the rights of the husband to the personal property of the wife in the event of his surviving her, and in default of her appointment, an express provision to that effect should be inserted in the deed.—*Jones v. Brown*, 1 Md. Ch. 191.

(m) When the settlement makes no disposition of the property in the event of the wife's death, and provides only for her dominion over it during coverture, the right of the husband as survivor is a fixed and stable right, over which a court of equity has no control, and of which he cannot be deprived.—*Jones v. Brown*, 1 Md. Ch. 191.

### § 32. Subsequent misconduct of husband or wife.

#### Annotation.

Misconduct of wife as affecting deed or gift to her before and in consideration of marriage.—6 L. R. A. (N. S.) 785, note.

### § 32½. Modification.

### § 33. Revocation or extinguishment.

(a) A married woman, possessed of a separate estate, conveyed the same to her husband on certain trusts, reserving to herself, in the deed of settlement, the power, by will duly executed according to the mode then prescribed for the execution of wills, or in the mode which might be prescribed at the time of the execution of her will, or by any testamentary paper in the nature of a will, provided the same should be executed in the presence of at least two persons, to change the trusts, etc., mentioned in the deed, to take effect after the death of her husband, and to dispose of, devise, and bequeath the property as she might think fit. She subsequently executed a testamentary paper, attested by three witnesses, which specifically referred to the power in the deed and pro-

fessed to be in execution of it. This paper though not executed with the formalities and under the restrictions prescribed by the statute empowering *femes covert* to dispose of their property held in their own right, was in due form a will to pass real estate in accordance with the provisions of the general law on the subject of wills. *Held*, that the testamentary paper, purporting to have been executed in pursuance of the power contained in the deed of settlement, was sufficient to satisfy either of the two modes therein prescribed for the execution of the power, and was properly admitted to probate.—*Schley v. McCeney*, 36 Md. 266. [Cited and annotated in 64 L. R. A. 895, on execution by will, of power of appointment.]

(b) The will of a married woman, executed as if she were a *feme sole*, is valid to pass property which she was entitled, by an antenuptial agreement, to hold absolutely to her sole and separate use, though no testamentary power be expressly given by the agreement.—*Michael v. Baker*, 12 Md. 158, 71 Am. Dec. 593. [Cited and annotated in 41 L. R. A. (N. S.) 41, as to when instrument informally phrased may be given effect as will.]

(c) By an antenuptial agreement, a married woman was empowered to devise and bequeath certain property, and to receive the income, etc., of certain funds to her own use, and to convey certain property for her own benefit. *Held*, that the Orphans' Court did rightly in admitting to probate a will of said married woman, executed as if she had been a *feme sole*, without inquiring how far the will was a valid execution of the power.—*Michael v. Baker*, 12 Md. 158, 71 Am. Dec. 593. [Cited and annotated, see *supra*.]

### § 34. Evidence.

#### Cross-References.

Concurrent jurisdiction of probate court and Supreme Court, of suit to set aside antenuptial contract, see "Courts," § 472.

Testimony as to transactions with persons since deceased, see "Witnesses," §§ 135, 150.

### § 35. Enforcement.

#### Cross-References.

Enforcement by child of party of antenuptial contract, see "Contracts," § 187. Specific performance, see "Specific Performance," § 82.



Specific performance, certainty of antenuptial contract, see "Specific Performance," § 28.

Specific performance, failure of consideration by death before marriage, see "Specific Performance," § 49.

*Annotation.*

Right of party to antenuptial marriage settlement who is in default to enforce covenants to be performed by the other party.—26 L. R. A. (N. S.) 858, note.

Specific performance of contract to provide for intended husband or wife.—12 L. R. A. (N. S.) 232, note.

(a) An agreement between a man and his intended wife in consideration of marriage, but without the legal attributes of a marriage settlement, so that it could not supersede the claims of creditors, intended to secure to her, for her own use, an annuity during life, may be enforced against the husband's representatives after the marriage and his death, and, if his estate be insufficient to pay his debts, she may be treated as a general creditor to the extent of her claim under the agreement; but, where the widow claimed payment of her annuity only from the time of her husband's death, the amount accruing during coverture cannot be decreed to her, but a dividend on the arrearages of her annuity from the death of her husband, with interest until his estate was sold, was decreed, as well as on the capital from which the annuity was to arise, the latter to be invested for her benefit, and distributed, on her death, among her children, who succeeded to her rights under the agreement.—*Buchanan v. Deshon*, 1 H. & G. 280. [Cited and annotated in 31 L. R. A. 177, on alien's right to inherit.]

(b) An agreement between a man and his intended wife, in consideration of marriage, to secure to her for her own use an annuity for life, may, after the marriage and the husband's death, be enforced by the wife against his representatives.—*Buchanan v. Deshon*, 1 H. & G. 280. [Cited and annotated, see *supra*.]

### III. CONVEYANCES, CONTRACTS, AND OTHER TRANSACTIONS BETWEEN HUSBAND AND WIFE.

*Cross-References.*

Contracts by husband and wife with third persons in general, see *ante*, § 17.

Married women as sole traders, see *post*, § 92.

Rights of action between husband and wife, see *post*, § 205.

Separate property of wife, see *post*, §§ 119, 134-146, 153.

Separation agreements, see *post*, §§ 278-280.

Abandonment by wife of claim to property conveyed to her by husband, see "Abandonment," § 4.

Adoption of common-law rule, see "Common Law," § 12.

Agreements between husband and wife as within statute of frauds, see "Frauds, Statute of," §§ 56, 74.

As obligation of estate of deceased husband, or wife, see "Executors and Administrators," § 202.

Consideration for sale of property by wife to husband, see "Contracts," § 62.

Contracts and transactions creating constructive trusts, see "Trusts," § 103.

Contracts and transactions creating resulting trusts, see "Trusts," § 81.

Conveyances of homestead, see "Homestead," § 113.

Estate of wife in realty conveyed to her by her husband as supporting real covenant, see "Covenants," § 80.

Illegal marriage as consideration for contract, see "Contracts," § 105.

Partition by mutual consent, see "Partition," § 3.

Priority of assignment to wife, see "Assignments," § 85.

Provability of wife's claim against husband's estate in bankruptcy, see "Bankruptcy," § 314.

Purchase by husband at sale held by wife as administratrix, see "Executors and Administrators," § 365.

Recovery of money paid husband under contract void under statute of frauds, see "Frauds, Statute of," § 138.

Reformation of invalid deed, see "Reformation of Instruments," § 7.

Specific performance of contracts, see "Specific Performance," § 34.

Transfers of shares of corporate stock, see "Corporations," §§ 114, 134, 139-141.

Validity as to creditors as affected by consideration, see "Fraudulent Conveyances," § 95.

Validity as to creditors as affected by indebtedness, insolvency and intent of grantor, see "Fraudulent Conveyances," §§ 54-72.

Validity as to creditors as affected by possession, see "Fraudulent Conveyances," § 146.

Validity as to creditors as affected by preferences as creditor of husband or wife, see "Fraudulent Conveyances," § 118.

Validity as to creditors as affected by property and rights transferred, see "Fraudulent Conveyances," §§ 43-53.

Validity as to creditors, as affected by relation of parties, see "Fraudulent Conveyances," §§ 104-106.

Validity of assent to conveyance, see "Deeds," §§ 68-78.

### § 36. Validity of transactions in general.

(a) When the relation of debtor and creditor is established between husband and wife, her rights will be regarded by the law with as much favor as those of other creditors.—*Mayfield v. Kilgour*, 31 Md. 240. [Cited and annotated in 20 L. R. A. 111, on parol evidence as to consideration of deed; in 56 L. R. A. 831, on burden of proof of husband's debt to wife for property received from her.]

### § 36½. What law governs.

#### Cross-References.

Conveyances and contracts to convey separate property, see post, § 180.  
Disabilities and privileges of coverture, see post, § 56.  
Liabilities and charges on separate property, see post, § 146½.  
Mutual rights, duties, and liabilities in general, see ante, § 2.  
Right of action by or against husband or wife, see post, § 203½.  
Separate property of married woman, see post, § 110½.  
Adoption of common-law rule, see "Common Law," § 12.

### § 37. Statutory provisions.

#### Cross-References.

Disabilities and privileges of coverture, see post, § 57.  
Married women as sole traders, see post, § 92.

### § 38. Contracts and debts existing at time of marriage.

#### Annotation.

Effect of intermarriage between debtor and creditor upon the indebtedness.—21 L. R. A. (N. S.) 683, note.

### § 39. Express contracts.

(a) Where a husband agrees to give his wife an equivalent for her property, which she unites with him in selling for his use, compensation for the value of the land sold by her in performance of her part of the contract will be decreed to her.—*Bowie v. Stonestreet*, 6 Md. 418, 61 Am. Dec. 318.

### § 40. Implied contracts.

### § 41. Services.

#### Cross-References.

Actions between husband and wife for services, see post, § 205.  
By husband to wife's separate estate, see post, § 142.  
Right of action by husband or wife to recover for services or earnings of wife, see post, § 208.

### § 42. Partnership.

(a) An action cannot be maintained against a husband and wife sued as copartners, where the cause of action is alleged to have accrued during the coverture.—*Mayer v. Soyster*, 30 Md. 402. [Cited and annotated in 16 L. R. A. 527, on business partnership between husband and wife.]

### § 43. Loans and advances.

#### Cross-References.

Actions between husband and wife on loans, see post, § 205.  
By husband to wife's separate estate, see post, § 143.  
Implied release of obligation, see "Release," § 1.

(a) An agreement between a husband and wife that the husband shall advance money for the purchase of articles of household furniture, and that the wife will subsequently reimburse him out of her separate estate, is valid and binding on both parties.—*Myers v. King*, 42 Md. 65.

### § 44. Bills and notes.

#### Cross-References.

Actions between husband and wife on bill or note, see post, § 205.  
As claim provable against husband's insolvent estate, see "Insolvency," § 105.  
Right of wife to interest on note of husband as question for jury, see "Interest," § 68.

### § 45. Sales and transfers of personal property.

#### Cross-References.

By married women in general, see post, § 86.  
Transfers of shares of corporate stock, see "Corporations," §§ 114, 134, 139-141.  
(a) The uncorroborated testimony of a wife in general terms is insufficient to establish her ownership by a parol transfer of all the earnings for a number of years of a business admittedly established and owned by her husband, and at which he worked during the time such earnings were made.—*Connar v. Leach*, 84 Md. 571, 36 Atl. 591; *Leach v. Connar*, Id. [Cited and annotated in 31 L. R. A. (N. S.) 846, on validity of direct conveyance by wife to husband.]

### § 46. Contracts for conveyance of real property.

#### Cross-References.

As within statute of frauds, see "Frauds, Statute of," §§ 56, 74.  
Partition by agreement, see "Partition," § 3.

(a) A husband and wife for a bona fide and valuable consideration may contract for a transfer of property from him to her.—*Brooks v. Dent*, 1 Md. Ch. 523. [Cited and annotated in 6 L. R. A. (N. S.) 383, on trust by husband's investing wife's separate property in realty in own name.] *Stockett v. Holliday*, 9 Md. 480. [Cited and annotated in 20 L. R. A. 111, on parol evidence as to consideration of deed; in 56 L. R. A. 832, on burden of proof of husband's debt to wife for property received from her.] *Jones v. Jones*, 18 Md. 464.

(b) Where a husband agreed to give his wife a parcel of land in exchange for a parcel held in her own right, and the husband sold the wife's estate and used the proceeds, he having failed to transfer the title of the land offered in exchange to his wife during his lifetime, she will be considered, at his death, one of the creditors against the assets of his estate, and entitled to the value of her property at the time of the proposed transfer by her husband, with interest thereon from the time of his death.—*Bowie v. Stonestreet*, 6 Md. 418, 61 Am. Dec. 318.

(c) A contract which a court of equity can enforce may be entered into by a husband for the transfer of real property to his wife for a bona fide and valuable consideration coming from her.—*Bowie v. Stonestreet*, 6 Md. 418, 61 Am. Dec. 318.

#### § 47. Conveyances by husband to or for wife.

##### Cross-References.

As constituting separate estate of wife, see post, § 119.

Conveyances by husband and wife in general, see ante, § 15.

Evidence as to validity, see "Deeds," §§ 196, 211.

Sufficiency of delivery in general, see "Deeds," § 56.

Validity as affected by fraud, see "Deeds," § 70.

Validity as affected by undue influence, see "Deeds," § 72.

##### Annotation.

Effect of conveyance by husband to wife.—69 L. R. A. 353, note.

(a) A husband conveyed to his wife property worth \$6,000. He claimed that the deed thereto had been executed upon the wife's agreement to loan him some money, but that she refused to comply with the contract, and the deed was not then delivered; that afterwards, upon her agreeing to give him a life

interest in the property, he delivered the deed, taking a memorandum signed by her of a lease to himself. She claimed that she took the property in payment of a loan of \$1,000 made 15 years previously; that the deed was delivered on the day of its execution; and that the memorandum was subsequently obtained by fraud; but weakened her testimony on cross-examination. The deed was recorded more than a year after its execution, and the memorandum was dated on the same day that the deed was recorded. The wife had told one witness that she had changed her mind with reference to permitting her husband to enjoy the rents from the property. *Held*, that the wife held the property in trust, and that the husband was entitled to the rents during his life.—*Wilson v. Wilson*, 86 Md. 638, 39 Atl. 276.

(b) A court of equity will not allow a married woman to hold property conveyed to her by her husband subject to an agreement to allow him to collect the rents during his life, and at the same time allow her to repudiate her agreement as void.—*Wilson v. Wilson*, 86 Md. 638, 39 Atl. 276.

(c) Under a conveyance of lands in trust for the grantor's wife for life, with remainder over to her children, or their survivors, living at her death, and the issue of any deceased child, the property, at the wife's death, to be conveyed and delivered to the children and their descendants as tenants in common, a child of the wife takes a vested interest defeasible or determinable on his death, without issue or descendants, before the death of his mother, but such interest becomes fixed and indefeasible in his descendants who survive the mother.—*Kemp v. Bradford*, 61 Md. 330. [Cited and annotated in 25 L. R. A. (N. S.) 892, on character of remainder created by grant or devise for life, with remainder to children who may survive.]

(d) A wife joined with her husband in the sale of her separate property, on the express agreement that a sum equal to the proceeds should be invested by him in real estate for her benefit. He accordingly bought such real estate, and conveyed it to his wife in execution of the agreement. *Held*, that a court of equity would not disturb this con-

veyance in favor of the heirs of the husband.—*Jones v. Jones*, 18 Md. 464.

(e) A wife's share in the personal estate of an ancestor was paid by the executor to the husband in his own right, and was applied by him in the purchase of property, for which he took a deed in his own name, and in 1847 conveyed it to his wife. *Held*, that the property could not be regarded as belonging to the wife.—*Wylie v. Basil*, 4 Md. Ch. 327. [Cited and annotated in 23 L. R. A. (N. S.) 34, 37, 116, on conditions precedent to equitable remedies of creditors.]

#### § 48. Conveyances by wife to or for husband.

##### Cross-References.

Conveyances by husband and wife in general, see ante, § 15.

Conveyance to husband of dower right, see "Dower," § 49.

Evidence as to validity, see "Deeds," §§ 196, 211.

Sufficiency of delivery in general, see "Deeds," § 56.

Validity as affected by duress, see "Deeds," § 71.

Validity as affected by fraud, see "Deeds," § 70.

Validity as affected by undue influence, see "Deeds," § 72.

##### Annotation.

Validity of conveyance of wife's real property to husband through himself as trustee or through a third person.—L. R. A. 1915C, 767, note.

Validity of direct conveyance by wife to husband.—31 L. R. A. (N. S.) 844, note.

(a) A conveyance was made in trust to allow a wife to hold and enjoy the property, and receive the entire income thereof for her separate use, with power, with the assent of the trustee, "to sell, dispose of, convey, and assign, absolutely or otherwise, the whole or any part" thereof, and with full power to devise without the trustee's consent, with limitation over of any part not so disposed of. *Held*, that a conveyance absolute by the husband, wife, and trustee to a third person, and a reconveyance by him to the husband, vested in the latter a perfect title.—*Carter v. Van Bokkelen*, 73 Md. 175, 20 Atl. 781.

(b) The only mode by which a feme covert can convey her estate, not held to her separate use, to her husband, except in the execution of a power, is by means of a conveyance to a third person for his use; he joining with his wife in the deed.—*Gebb v. Rose*, 40

Md. 387. [Cited and annotated in 20 L. R. A. 702, on validity of deed to husband; in 28 L. R. A. (N. S.) 873, on relief from mistake of law as to effect of instrument; in 31 L. R. A. (N. S.) 845, 849, on validity of direct conveyance by wife to husband.]

(c) When a married woman conveys real estate, her husband must join in the conveyance, although the property conveyed be the separate estate of the wife; hence a conveyance of real estate by a married woman to her husband is void.—*Preston v. Fryer*, 38 Md. 221. [Cited and annotated in 20 L. R. A. 702, on validity of deed to husband; in 21 L. R. A. 51, on purchaser at judicial sale as bona fide purchaser; in 69 L. R. A. 39, on relief of purchaser on annulling judicial sale; in 31 L. R. A. (N. S.) 845, on validity of direct conveyance by wife to husband.]

#### § 49. Gifts.

##### Cross-References.

As separate estate of wife, see post, § 116.

Of community property, see post, § 266.

Of separate property, consent of husband, see post, § 184.

Of separate property, estoppel to deny validity, see post, § 198.

Inheritance from donee, see "Descent and Distribution," § 61.

#### § 49½.— Gift by husband to or for wife.

##### Cross-Reference.

Intended gift by husband to wife as claim provable against his estate in bankruptcy, see "Bankruptcy," § 314.

(a) Facts held to show that money deposited by a husband in his wife's name, although he retained control thereof, and managed it as her agent, was an executed gift to the wife.—*Martin v. Munroe*, 121 Md. 679, 89 Atl. 319.

(b) Mere declarations of a husband that whoever lives the longer of himself and wife shall have everything do not constitute a gift.—*Bauernschmidt v. Bauernschmidt*, 97 Md. 35, 54 Atl. 637; *Baltimore Trust & Guarantee Co. v. Same*, Id. [Cited and annotated in 40 L. R. A. (N. S.) 906, on transfer of key to receptacle as sustaining gift of contents.]

(c) A husband's transfer to a purchaser of corporate stock held by himself and wife as tenants by the entirety (the wife's interest having come from him as a gratuity) will be presumed to have been rightful, negating the idea of a completed gift to the wife.—*Bauernschmidt v. Bauernschmidt*, 97 Md. 35, 54 Atl. 637; *Baltimore Trust & Guarantee*

*Co. v. Same. Id.* [Cited and annotated, see supra.]

(d) A wife took bonds of the husband to the amount of 10,000 marks, and with her lover immediately fled from her home in Berlin to America. She claimed that her husband gave the bonds to her to conciliate her, she having caught him in adultery. The husband knew at the time of the alleged gift that the lover was paying the wife marked attentions, and immediately thereafter he instituted proceedings against the lover for theft of the bonds. *Held*, that, the bonds were stolen by the wife, and were not a gift to her.—*Rothenburg v. Vierath*, 87 Md. 634, 40 Atl. 655.

(e) The receipt and appropriation by a husband of money constituting the separate estate of his wife with her knowledge and acquiescence does not establish the relation of debtor and creditor between them, and entitle the wife to compensation out of the husband's assets, unless at the time of such receipt he expressly agreed to repay the money so received and appropriated.—*Kuhn v. Stanfield*, 28 Md. 210, 92 Am. Dec. 681.

(f) Property conveyed by a husband to his wife as a gift cannot be reached by a subsequent creditor.—*Niller v. Johnson*, 27 Md. 6.

(g) Courts of equity will uphold gifts from a husband to his wife after marriage, though such gifts are ordinarily void at law; and the gift will, as against the husband and his administrator, but not as against his creditors, vest in the wife an unimpeachable right of property, which will be treated as her exclusive and separate estate.—*George v. Spencer*, 2 Md. Ch. 353.

(h) Courts of equity require clear, satisfactory, and incontrovertible evidence to establish a gift made by a husband to his wife after marriage.—*George v. Spencer*, 2 Md. Ch. 353.

#### § 49¾.—Gifts by wife to or for husband.

##### Annotation.

Investment by husband in his own name of wife's separate property in real estate as gift to husband.—6 L. R. A. (N. S.) 381; 26 L. R. A. (N. S.) 161, notes.

(a) If a wife gives her husband property belonging to her separate estate, or permits

him to apply it to his own use, or he does so with her knowledge and consent, in the absence of proof that it was given to him in trust for her use, or of his promise at the time to repay it, it will be presumed that an absolute gift was intended, and she has no claim therefor against him or his estate.—*Reed v. Reed*, 109 Md. 690, 72 Atl. 414. [Cited and annotated in 39 L. R. A. (N. S.) 196, on applicability of statutory provision for restoration of property on divorce, to voluntary gifts or conveyances.]

(b) In a suit by an executor to recover from the husband of his testatrix the proceeds of certain securities alleged to belong to testatrix at the time of her death, evidence examined, and *held* insufficient to show a gift of the securities by the testatrix in her lifetime to her husband.—*Gittings v. Winter*, 101 Md. 194, 60 Atl. 630. [Cited and annotated in 6 L. R. A. (N. S.) 383, on trust by husband's investing wife's separate property in realty in own name.]

(c) The indorsement by testatrix on the back of a paper containing a list of securities, "My property, given into the hands of my husband," and "Sold by him," which was in the handwriting of and signed by testatrix, did not show a gift of the securities by the wife to the husband.—*Gittings v. Winter*, 101 Md. 194, 60 Atl. 630. [Cited and annotated, see supra.]

#### § 50. Confessions of judgment.

#### § 51. Releases.

##### Cross-Reference.

Implied release, see "Release," § 1.

#### § 52. Rescission or avoidance.

(a) A married woman is not estopped to recover property voluntarily conveyed by her to her husband, such conveyance being void, by the fact that she afterwards joined her husband in conveying it to a third person, without consideration, in order to have it conveyed to a daughter of the husband by a former marriage, in fraud of plaintiff's rights.—*Connar v. Leach*, 84 Md. 571, 36 Atl. 591; *Leach v. Connar*, *Id.* [Cited and annotated in 31 L. R. A. (N. S.) 846, on validity of direct conveyance by wife to husband.]

(b) A married woman who has indorsed in blank a mortgage in her favor with the collateral bond, and delivered them to her husband, and who had knowledge of a sub-

sequent transaction by him with a bank, whereby he obtained money, using such bond and mortgage as collateral security, was estopped to set up any claim to the collaterals affecting the rights of the bank.—*Flanagin v. Hambleton*, 54 Md. 222. [Cited and annotated in 35 L. R. A. (N. S.) 96, on payment by commercial paper.]

### § 53. Torts.

#### Cross-References.

Liability of husband for torts of wife in general, see post, §§ 102-105.

Liability of separate estate, see post, § 174.

Liability of wife for her own torts in general, see post, §§ 102-105.

Communication of venereal disease as tort, see "Torts," § 7.

Liability of husband to exemplary damages for slander by wife, see "Libel and Slander," § 120.

Right of divorced wife to maintain action for personal tort committed by husband while living together as man and wife, see "Divorce," § 316.

### § 54. Crimes.

#### Cross-References.

Abandonment or nonsupport of wife, see post, §§ 302-321.

Admissions as evidence in prosecutions for wife-beating, see "Criminal Law," § 407.

Competency of wife to make complaint against husband, see "Criminal Law," § 210.

Criminal responsibility for leaving wife in house of prostitution, see "Prostitution."

Criminal responsibility of husband for beating wife, see "Assault and Battery," § 48.

Jurisdiction, see "Criminal Law," § 96.

Liability for rape of wife, see "Rape," § 18.

## IV. DISABILITIES AND PRIVILEGES OF COVERTURE.

#### Cross-References.

Pleading defense of coverture, see post, § 230.

Proof of marriage, see post, § 233.

Acquirement of highway by prescription as against married woman, see "Highways," § 3.

Competency as witnesses for or against each other, see "Witnesses," §§ 52-65.

Competency, as witness, of husband or wife of party or other person interested, see "Witnesses," § 106.

Competency of evidence as to conversations between, see "Criminal Law," § 386.

Competency of testimony as to transactions with deceased spouse as agent of survivor, see "Witnesses," § 154.

Competency of wife as attesting witness to note of husband as bringing note within statute of limitations applicable to attested writings, see "Limitation of Actions," § 25.

Competency to testify to transaction with person since deceased or incompetent where testimony of spouse is excluded, see "Witnesses," § 146.

Coverture as affecting eligibility for liquor license, see "Intoxicating Liquors," § 58.

Coverture as affecting eligibility to act as guardian ad litem, see "Infants," § 81.

Coverture as affecting limitations, see "Limitation of Actions," § 73.

Declarations by husband or wife as evidence against the other, see "Evidence," § 248.

Liability of married woman stockholder of national bank, see "Banks and Banking," § 248.

Marriage as vacating appointment of female as administratrix, see "Executors and Administrators," § 34.

Married women as guardians, see "Guardian and Ward," §§ 10, 24.

Married women as involuntary bankrupts, see "Bankruptcy," § 67.

Power of married woman to appoint testamentary guardian, see "Guardian and Ward," § 11.

Promise of married woman as consideration for transfer attacked by her grantor's creditors as fraudulent, see "Fraudulent Conveyances," § 76.

Right of married women to purchase public lands, see "Public Lands," § 38.

Right of married women to purchase state school land, see "Public Lands," § 173.

Right of married women to redeem from tax sale, see "Taxation," § 697.

Right of married woman to sign petition for election to consider issuance of municipal bonds, see "Municipal Corporations," § 918.

Testamentary capacity, see "Wills," §§ 28-30.

Validity of mortgage by wife to compromise criminal prosecution against husband, see "Contracts," § 128.

### (A) IN GENERAL.

#### Cross-Reference.

Capacity to sue and be sued, see post, § 203.

### § 55. Status of married women in general.

### § 56. What law governs.

#### Cross-References.

Community property, see post, § 246.

Construction and operation of marriage settlement, see ante, § 31.

Conveyances and contracts to convey separate property, see post, § 180.

Conveyances, contracts, and other transactions between husband and wife in general, see ante, § 36½.

Liabilities and charges on separate property, see post, § 146½.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Mutual rights, duties and liabilities in general, see ante, § 2.  
 Right of action by or against husband or wife, see post, § 203½.  
 Separate property of married woman, see post, § 110½.

**§ 57. Constitutional and statutory provisions.**

*Cross-References.*

Married women as sole traders, see post, § 92.  
 Relating to conveyances, contracts, and other transactions between husband and wife in general, see ante, § 37.  
 Implied repeal of act by inconsistent act relating to capacity of wife to sue, see "Statutes," § 159.

**§ 58. Capacity to appoint agent, attorney, or trustee.**

*Cross-References.*

Husband as agent of wife in general, see ante, § 25.  
 Husband as agent of wife's separate property, see post, § 138.  
 Wife as agent of husband in general, see ante, §§ 20-23¾.

(a) A power of sale in a mortgage to a married woman may be executed by her, or, in case of an assignment of the mortgage debt under seal, though without any consideration, to a third person as trustee by such assignee.—*Bouldin v. Reynolds*, 58 Md. 491.

**§ 59. Capacity to act as agent or trustee.**

**§ 60. Submission to arbitration.**

**§ 61. Confession of judgment.**

**§ 62. Estoppel.**

*Cross-References.*

Denial of validity of mortgage of separate property, see post, §§ 169, 171.  
 Estoppel to claim property as separate property, see post, § 129.  
 Estoppel by deed, see "Estoppel," § 45.  
 Estoppel by deed of spouse, see "Estoppel," § 27.  
 Estoppel of husband by joining in deed of property of wife, see "Estoppel," § 31.  
 Estoppel of husband to deny validity of tax sale of husband's land to wife, see "Taxation," § 624.

(a) Under act 1715, c. 47, and act 1766, c. 14, covenants of warranty contained in a married woman's deed, do not estop her from setting up an after-acquired title.—*Preston v. Evans*, 56 Md. 476. (See Code, art. 45, § 4; *Id.* [vol. 3], art. 45, § 4.) [Cited and annotated in 22 L. R. A. 781, on effect of covenants of married women and their estoppel by deed or mortgage.]

(b) A married woman is estopped by her deed.—*Morris v. Harris*, 9 Gill 19. [Cited and annotated in 57 L. R. A. 333, 334, on effect of partition deed.]

§ 63. (Omitted from the classification used herein.)

**§ 64. Eligibility for office or public employment.**

**§ 65. Effect of incapacity or absence of husband or separation.**

*Cross-Reference.*

Separation affecting limitations against wife, see "Limitation of Actions," § 73.

**§ 66. Removal of disabilities.**

**§ 67. Effect of termination of coverture.**

*Cross-Reference.*

Effect on pending action, see post, § 223.

**(B) PROPERTY AND CONVEYANCES.**

*Cross-References.*

Between husband and wife, see ante, § 46.  
 Conveyances by husband and wife in general, see ante, § 15.  
 Conveyance to or by husband and wife, see ante, §§ 14, 15.  
 Mortgage or pledge of separate property, see post, §§ 169-172.  
 Property conveyed to married woman as her separate property, see post, § 119.  
 Separate property, see post, §§ 110-202.  
 What law governs, see ante, § 56.  
 Capacity to convey as affecting right to specific performance, see "Specific Performance," § 33.  
 Conveyance of future interest in land devised, see "Wills," § 742.  
 Investment of funds of married infant under order of court, see "Infants," § 34.  
 Transfer of shares of corporate stock, see "Corporations," § 134.

**§ 68. Capacity to take and hold property.**

**§ 69. Capacity to convey.**

(a) Act 1876, c. 399, requires that an application to the county commissioners for the extension of streets and avenues in Baltimore county shall be signed by the "owners of a majority of front feet of ground," etc. *Held*, that, notwithstanding her common-law disability to incumber her land independently of her husband, a married woman, owner of land abutting on a street proposed to be extended, may sign the application with the same force and effect as if she were sui juris.—*Galloway v. Shipley*, 71 Md. 243, 17 Atl. 1023.

(b) A married woman may make an assignment for the benefit of creditors.—*Schuman v. Peddicord*, 50 Md. 560.

(c) A feme covert may convey all her interest in land, and such conveyance operates as an estoppel against her, as effectual as if she were sui juris.—*Morris v. Harris*, 9 Gill 19. [Cited and annotated, see *supra*, § 62.]

### § 69½. Adverse possession.

#### Cross-References.

Adverse possession by husband of wife's separate property, see post, § 136.  
Between husband and wife, see ante, § 16.  
As affected by admissions of husband, see "Adverse Possession," § 50.  
Coverture as affecting limitations, see "Limitation of Actions," § 73.

### § 70. Requisites and validity of conveyances.

#### Cross-Reference.

Acknowledgment of married woman, see "Acknowledgment," §§ 25, 37.

(a) A feme covert cannot alien her real estate unless her husband join with her in the deed.—*Lawrence v. Heister*, 3 H. & J. 371.

### § 71. Trusts.

### § 72. Gifts.

#### Cross-References.

As separate estate, see post, § 116.  
Between husband and wife, see ante, §§ 49½, 49¾.  
Of separate property, consent of husband, see post, § 184.

### § 73. Ratification.

#### Cross-References.

Mortgage of separate property, see post, § 169.  
Marriage of infant as affecting time for disaffirming conveyance, see "Infants," § 30.

### § 74. Avoidance.

#### Cross-References.

Of mortgage of separate property, see post, §§ 169, 171.  
By infant married woman, see "Infants," § 31.

(a) An injunction against the foreclosure of a mortgage given by a wife, on the ground that she had executed the same at the request of her husband without knowing that the same was a mortgage, will not be granted where there was no evidence that the husband obtained it by fraud or deceit, but simply that the wife failed to read the paper,

and there was no evidence that the mortgagee had any notice thereof.—*Comegys v. Clarke*, 44 Md. 108.

### §§ 75, 76. Jurisdiction of courts.

#### Cross-Reference.

Decree conferring on married woman rights and privileges of feme sole as authorizing wife to sue husband, see post, § 205.

### § 77. (Omitted from the classification used herein.)

### (C) CONTRACTS.

#### Cross-References.

Abandonment by husband, effect on capacity to make contract, see ante, § 65.  
Actions by husband or wife or both on contracts, see post, § 208.  
Between husband and wife in general, see ante, § 36.  
By husband and wife in general, see ante, § 17.  
Estoppel by contract, see ante, § 62.  
Estoppel to deny validity of contract, see ante, § 62.  
For necessities and family expenses, see ante, § 19.  
Relating to separate property, see post, §§ 152-156, 158-162, 164-167, 169-172, 179-202.  
Separation agreements, see post, §§ 277-301.  
What law governs, see ante, § 56.  
Capacity of married woman to contract for or consent to improvements on separate estate as affecting right to mechanic's lien, see "Mechanics' Liens," § 68.  
Necessity for wife to consent to assignment of lease, see "Landlord and Tenant," § 78.  
Promise by wife to pay husband's debt as within statute of frauds, see "Frauds, Statute of," § 10.  
Specific performance, see "Specific Performance," §§ 33, 35.  
Threat of criminal prosecution of husband as duress of wife, see "Contracts," § 95.

### § 78. Contracts before marriage.

#### Cross-Reference.

Action by husband or wife or both, see post, § 208.  
Antenuptial contracts in fraud of husband, see ante, § 8.

### § 79. Capacity to contract.

#### Annotation.

Competency to enter into arbitration agreement.—47 L. R. A. (N. S.) 845, note.

(a) Prior to act 1898, c. 457, authorizing married women to contract as if unmarried, the contracts of married women were void,



except where the common-law powers to contract were enlarged by statute, and act 1882, c. 265, and act 1892, c. 590, relating to the earnings of married women and the right of married women to maintain boarding houses, do not affect the liability of a married woman for groceries furnished her.—*Lyell v. Walbach*, 113 Md. 574, 77 Atl. 1111. (See Code, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(b) A married woman's contract, except in regard to her separate estate, is absolutely void, whether entered into by herself or on her behalf by her husband.—*Frazee v. Frazee*, 79 Md. 27, 28 Atl. 1105. (See Code, art. 45, §§ 4, 5; Id. [vol. 3], art. 45, § 4.) [Cited and annotated in 4 L. R. A. (N. S.) 548, on ownership of separate estate, trade or business as condition of married woman's right to contract.]

(c) Assumpsit cannot be maintained against the executors of a married woman for menial services performed for her, on her verbal agreement to pay for them, but in which her husband did not join, though it is alleged that she was possessed of a separate estate, and that her husband had no estate at all; the case not being within any of the statutory exceptions to the common-law disabilities of married women.—*Davis v. Carroll*, 71 Md. 568, 18 Atl. 965. (See Code, art. 45, §§ 4, 5; Id. [vol. 3], art. 45, § 4.)

(d) Though a married woman may not enter into a contract of partnership nor bind herself by her covenants, neither by common law nor by statute is she debarred from taking a lease to herself jointly with another.—*Cruzen v. McKaig*, 57 Md. 454. (See Code, art. 45, §§ 4, 5, 20; Id. [vol. 3], art. 45, § 4.) [Cited and annotated in 43 L. R. A. 164, 171, on effect of judgment in action against part of joint or joint and several obligors on liability of others.]

(e) Act 1867, c. 223, § 2, provides that "in all deeds hereafter made to married women of real estate or chattels real, it shall be competent for the grantee or lessee to bind herself and her assigns by any covenant running with or relating to the real estate or chattels real, the same as if she was a feme sole." Held, that a married woman is bound by a deed of lease in which she covenants to pay a certain annual rent for the

premises and all taxes thereon.—*Worthington v. Cooke*, 52 Md. 297. (See Code, art. 45, § 18.)

(f) Except in regard to the separate property of a married woman, all her contracts, covenants, and agreements, whether entered into by herself, or by her husband on her behalf with or without her consent, are absolutely null and void in both law and equity. Therefore, where a wife joins her husband in the disposal of a fund, in which he has marital rights, her execution of the assignment does not impair her right or interest in the fund.—*Norris v. Lantz*, 18 Md. 260. (See Code, art. 45, §§ 4, 5; Id. [vol. 3], art. 45, § 4.)

### § 80. Requisites and validity of contracts in general.

(a) The forbearance of the creditors of a husband, and the granting of an extension of time for the payment of his debts, is a valid consideration for an assignment by the wife of a policy of insurance on the husband's life, taken out for her benefit and made payable to her.—*Emerick v. Coakley*, 35 Md. 188.

(b) An agreement for the partition of lands, made by a feme covert in her husband's presence, assented to by him, and consummated by an actual division, under which each party takes possession, and holds for 14 years, cannot be invalidated simply on the ground of her coverture.—*Hardy v. Summers*, 10 G. & J. 316, 32 Am. Dec. 167. [Cited and annotated in 13 L. R. A. (N. S.) 103, on possession of land as notice of title.]

### § 81. Instruments under seal.

#### Cross-References.

Effect of joinder by wife in husband's deed in general, see ante, § 15.

Necessity for husband and wife joining in mortgage on household goods, see "Chattel Mortgages," § 30.

Registration of chattel mortgage by married woman as notice, see "Chattel Mortgages," § 150.

(a) Under act 1872, c. 270, providing that a married woman may contract with reference to her separate estate, a married woman is not liable on a covenant of general warranty contained in a deed which she signed with her husband for the purpose of releasing her dower interest in the land conveyed thereby, since such covenant does not relate

to her separate estate.—*Pyle v. Gross*, 92 Md. 132, 48 Atl. 713. (See Code, art. 45, §§ 4, 5; Id. [vol. 3], art. 45, § 4.) [Cited and annotated in 14 L. R. A. (N. S.) 516, on remote grantee's right to sue for breach of covenant when covenantor had neither title nor possession.]

(b) A bond, executed by a feme covert without the joinder of her husband, is unenforceable against herself or her administrators.—*Harris v. Dodge*, 72 Md. 186, 19 Atl. 597.

(c) A wife who joins in a deed for the purpose of relinquishing her dower is not liable on the covenants in the deed.—*Nicholson v. Hemsley*, 3 H. & McH. 409. [Cited and annotated in 22 L. R. A. 779, on effect of covenants of married women and their estoppel by deed or mortgage.]

### § 82. Services.

#### Cross-References.

Action by husband or wife or both for services, see post, § 208.  
Services and earnings in general, see ante, § 5.

### § 83. Necessaries.

#### Cross-References.

Liabilities of wife's separate estate, see post, § 151.  
Liability for necessities in general, see ante, § 19.

(a) Surgeons are justified in performing an operation on a married woman with her consent, when, after consultation, they deem it necessary, whether the husband consents or not, since it is his duty to provide necessary medical attendance.—*State v. Housekeeper*, 70 Md. 162, 16 Atl. 382, 14 Am. St. Rep. 340. [Cited and annotated in 37 L. R. A. 832, on degree of care and skill which physician or surgeon must exercise; in 1 L. R. A. (N. S.) 441, on liability for performing surgical operation without consent.]

### § 84. Loans and advances.

#### Cross-References.

Between husband and wife, see ante, § 43.  
Estoppel to deny validity, see ante, § 62.  
Loans to married woman as her separate property, see post, § 110.

### § 85. Bills and notes.

#### Cross-References.

Between husband and wife, see ante, § 44.  
Burden of proving invalidity of judgment note, see post, § 232.  
Estoppel to deny validity, see ante, § 62.  
Liabilities of wife's separate estate, see post, § 156.

Presumptions and burden of proof in action on bill or note, see post, § 232.

Right of action against husband or wife or both on bill or note, see post, § 213.

Right of action against husband or wife or both on bill or note to charge separate estate, see post, § 215.

Statutory provisions, see ante, § 57.

What law governs, see ante, § 56.

Defenses against bona fide purchaser, see "Bills and Notes," §§ 366, 370.

Sufficiency of consideration, see "Bills and Notes," § 94.

### § 86. Purchases and sales.

#### Cross-References.

Between husband and wife, see ante, § 45.

Right of action against husband or wife or both, see post, § 213.

(a) Under Code 1860, art. 16, § 131, giving equity courts authority on ordering a resale of realty sold by a trustee, for default in the terms of the sale, to pass a decree in personam against the first purchaser for the amount by which the second sale fell short of the first, a married woman is liable personally equally with any other defaulting purchaser.—*Fowler v. Jacob*, 62 Md. 326. (See Code 1911, art. 16, § 224.)

### § 87. Guaranty or suretyship.

#### Cross-References.

See ante, § 17.

Estoppel, see ante, § 62.

Liabilities of wife's separate estate, see post, §§ 158, 159.

Removal of disabilities of coverture, see ante, § 66.

What law governs, see ante, § 56.

Decisions of state courts as to validity as authority in federal courts, see "Courts," § 366.

#### Annotation.

Power of married woman, under statute giving her sole control of her separate estate, to become surety for one other than her husband.—17 L. R. A. (N. S.) 676, note.

### § 88. Releases.

### § 89. Ratification.

(a) The promise of a married woman made after act 1898, c. 457, authorizing married women to contract as if unmarried, became effective, to pay for goods previously purchased by her under a contract void under the law in force at the time, must be supported by a legal consideration, and the mere moral obligation to pay the debt is insufficient.—*Lyell v. Walbach*, 113 Md. 574, 77 Atl. 1111. (See Code, art. 45, §§ 4, 5; Id. [vol. 3], art. 45, § 4.)

**§ 90. Avoidance.****(D) TRADE OR BUSINESS.****Cross-References.**

Capacity of married woman to appoint agent to carry on business, see ante, § 58.

Liability of separate estate for debts incurred in business, see post, § 160.

Partnerships between husband and wife, see ante, § 42.

Profits of separate property used in business as separate property, see post, § 125.

What law governs, see ante, § 56.

§§ 91-96. (See Analysis.)

**§ 97. Married women as partners.**

(a) A married woman, having no contractual capacity, cannot enter into partnership relations.—*Bradstreet v. Baer*, 41 Md. 19. (But see Code, art. 45, § 20.) [Cited and annotated in 16 L. R. A. 527, on business partnership between husband and wife.]

**§ 98. Married women as members of corporations or joint-stock companies.****§ 99. Rights and liabilities of husband of sole trader.**

(a) A husband is not liable for goods sold to his wife on her separate credit as a feme covert trader, where he has never assumed to pay for such goods.—*Weisker v. Lowenthal*, 31 Md. 413.

**§ 100. Rights and remedies of creditors of sole trader.****Cross-Reference.**

Bankruptcy proceedings, see "Bankruptcy," § 67.

**(E) TORTS.****Cross-References.**

Liability of separate estate, see post, § 174.

Rights of action for torts of wife, see post, § 214.

**§ 101. Torts committed before marriage.**

§§ 102-105. (See Analysis.)

**(F) CRIMES.****Cross-References.**

Dealing with people as the wife of a man as false personation, see "False Personation," § 2.

Illegal sale of intoxicating liquors, see "Intoxicating Liquors," § 170.

Robbery by husband and wife, see "Robbery," § 13.

§ 106. (Omitted from the classification used herein.)

§§ 107, 108. (See Analysis.)

**V. WIFE'S SEPARATE ESTATE.****Cross-References.**

Capacity of wife to sue and be sued, see post, § 203.

Gift by husband to wife of income from separate estate of wife, see ante, § 49½.

Gift by wife to husband of separate estate, see ante, § 49¾.

Power to appoint agent for management, see ante, § 58.

Rights of action relating to separate estate, see post, §§ 210, 215.

Allowance of alimony to husband out of wife's separate estate, see "Divorce," § 231.

Application of payments to debts of husband or wife, see "Payment," § 39.

Assignment to husband of mortgage on wife's estate as merging estates, see "Mortgages," § 268.

Averments in indictment as to ownership, see "Indictment and Information," § 105.

Capacity of wife to devise or bequeath, see "Wills," § 29.

Disposition on divorce, see "Divorce," §§ 250, 252.

Homestead in separate estate, see "Homestead," § 87.

Nature of devise for separate use of married woman, see "Wills," § 601.

Satisfaction of wife's claims against property transferred to her by husband to defraud creditors, see "Fraudulent Conveyances," § 322.

Settlement of claims of wife against husband for separate property in divorce suit, see "Divorce," § 154.

Statutes governing inheritance, see "Descent and Distribution," § 6.

Title of trustee in bankruptcy to property of wife of bankrupt, see "Bankruptcy," § 143.

Writ of possession for land claimed by wife, see "Ejectment," § 119.

**(A) WHAT CONSTITUTES.****Cross-References.**

Conveyances to husband and wife, see ante, § 14.

Bastardy bond, see "Bastards," § 89.

Insurance on life of bankrupt, see "Bankruptcy," § 143.

Property acquired by adverse possession, see "Adverse Possession," § 105.

§ 109. (Omitted from the classification used herein.)

**§ 110. Nature of equitable or statutory estate.****Cross-References.**

Admissibility of evidence, see post, § 132.

Presumptions and burden of proof, see post, § 131.

Weight and sufficiency of evidence, see post, § 138.

(a) A policy of insurance, taken on the life of a husband for the sole use of his wife and payable to her or her assigns, is a chose in action of the wife, which she may assign or otherwise dispose of with her husband's consent.—*Whitridge v. Barry*, 42 Md. 140. [Cited and annotated in 25 L. R. A. 179, on enforceability of contracts of married women in other state; in 63 L. R. A. 861, on conflict of laws as to insurance contracts.]

(b) A married woman became entitled by devise to real estate which, under proceedings instituted to obtain a partition of the same, was sold; and the decree for the sale thereof provided, with the consent of the husband, who in his answer disclaimed all right, title, or interest in said real estate, that the proportion of the proceeds of the sale thereof be allotted to the wife, and should be deemed her separate estate, free from any claim or control of her husband or his creditors. The auditor, in pursuance of this decree, in his account distributing the proceeds of the sale, allotted to the sole and separate use of the wife her proportion thereof, and the same was paid to her attorney. Held, that the funds in the hands of the attorney of the wife cannot be attached to answer a debt of the husband.—*Smith v. McAtee*, 27 Md. 420, 92 Am. Dec. 641. [Cited and annotated in 57 L. R. A. 356, on conflict of laws as to matrimonial property.]

(c) A laborer was employed on condition that he would abstain from drink and would allow his wife to draw his wages, to be used in support of himself and wife and children. The wages were paid on this condition, part being used by the wife to support the family, and the balance deposited in a bank in the name of the employer for the wife. Held, that the condition and arrangement under which the wife was permitted to draw these wages, and the circumstance of the deposit, gave her no right to this fund as her separate estate.—*McCubbin v. Patterson*, 16 Md. 179.

(d) Property held to the sole and separate use of a married woman under acts 1842 and 1843 is in no manner subject to the marital rights of a husband.—*Bridges v. McKenna*, 14 Md. 258. (See Code, art. 45, §§ 1-4; Id. [vol. 3], art. 45, § 4.) [Cited and annotated

in 30 L. R. A. 118, on injunction against execution sales or other proceedings under final process.]

(e) A feme covert, holding property to her sole and separate use without a trustee, under act 1842, c. 293, § 8, may have her remedy in a court of law against her husband's creditors, unlawfully subjecting said property to the payment of his debts.—*Bridges v. McKenna*, 14 Md. 258. (See Code, art. 45, §§ 3, 4; Id. [vol. 3], art. 45, § 4.) [Cited and annotated, see supra.]

(f) The whole intention of a deed of settlement of property upon a wife may be gathered from the general language used, and mere absence of technical terms or words of limitation will not prevent the title extending beyond the wife's death, if such appears to be the main intent.—*Hutchins v. Dixon*, 11 Md. 29.

(g) When the words "next of kin," "heirs," and "representatives," are used in trust settlements by a man to his wife to designate the persons who are to take at the wife's death, they are generally construed as having been so employed for the purpose of barring the husband.—*Hutchins v. Dixon*, 11 Md. 29.

(h) No specific words are necessary to create a separate estate, except it must appear from the language of the conveyance that the intention was to place the property beyond the control of the husband and all others.—*Turton v. Turton*, 6 Md. 375.

(i) The words, "for me and in my name," in a power of attorney from a wife to her husband, authorizing him to collect her share of an intestate's estate, are not sufficient to create a separate estate in favor of the wife.—*Turton v. Turton*, 6 Md. 375.

## § 110½. What law governs.

### Cross-References.

Construction and operation of marriage settlement, see ante, § 31.

Conveyances and contracts to convey separate property, see post, § 180.

Conveyances, contracts, and other transactions between husband and wife in general, see post, § 36½.

Husband's vested rights, see post, § 134.

Liabilities and charges on separate property, see post, § 146½.

Mutual rights, duties, and liabilities in general, see ante, § 2.

Privileges and disabilities of coverture, see post, § 56.

# § 111. Married women's property acts.

## § 112.— Constitutionality.

### Cross-References.

As to suits by or against, see post, § 204.  
Act providing that personal property belonging to any woman on her marriage shall remain her separate property, and applying to existing marriages, as depriving husband of vested rights, see "Constitutional Law," § 98.

## § 113.— Construction and operation in general.

### Cross-References.

As to contracts of married women in general, see ante, § 79.  
As to conveyances, contracts, and other transactions between husband and wife in general, see ante, § 37.  
As to gifts between husband and wife, see ante, §§ 49½, 49¾.  
As to mortgage or pledge of separate property to secure debt of husband, see post, § 171.  
As to mortgage or pledge of separate property to secure debts of third persons, see post, § 172.  
As to power to convey, see post, § 181.  
As to suits by or against, see post, § 204.  
Effect of married women's act on right to enter into separation agreement, see post, § 278.  
Effect on estates created by conveyance to husband and wife, see ante, § 14.  
Effect on husband's liability for wife's antenuptial debts, see ante, § 18.  
Vested rights of husband in general, see post, § 134.  
As affecting limitations, see "Limitation of Actions," § 73.  
(a) Property acquired by a feme covert to her sole and separate use under act 1842, c. 293, § 8, is not only exempt from liability for the husband's debts, but is during the coverture in no manner subject to his marital rights. The whole estate, legal and equitable, is vested in the wife, subject to her control and disposition as if she were unmarried.—*Bridges v. McKenna*, 14 Md. 258. (See Code, art. 45, §§ 1-4; Id. [vol. 3], art. 45, § 4.) [Cited and annotated in 30 L. R. A. 118, on injunction against execution sales or other proceedings under final process.]  
(b) All property, real and personal, belonging to a married woman at the time of her marriage, and held by her generally, and not limited to her sole and separate use, is by the act of 1853 merely protected from the debts of the husband, leaving his marital rights over it in other respects unimpaired.

—*Bridges v. McKenna*, 14 Md. 258. (See Code, art. 45, §§ 1-4; Id. [vol. 3], art. 45, § 4.) [Cited and annotated, see supra.]

(c) The provision of the Constitution (Const. 1857, art. 3, § 38), that the Legislature "shall pass laws necessary to protect the property of the wife from the debts of the husband during her life, and for securing the same to her issue after her death," does not operate to change the rights of property acquired by marriage, so as to deprive the husband of all his marital rights secured to him by the common law.—*Schindel v. Schindel*, 12 Md. 294. (See Const. 1867, art. 3, § 43.) [Cited and annotated in 49 L. R. A. (N. S.) 91, on right of wife in fault for separation to separate maintenance; in 23 L. R. A. 649, on what expectant and contingent interests in property are subject to attachment or execution.]

## § 114.— Retroactive operation.

### Cross-References.

As to power to convey, see post, § 181.  
As to suits by or against, see post, § 204.  
(a) Code 1888, art. 45, relative to husband and wife, gave the wife a vested title in her real estate, subject to the expectant life interest therein of the husband, which became consummated only in case of her death intestate and his survival. Act 1898, p. 1083, c. 457, provides that a husband shall acquire by virtue of his marriage an estate for his life in one-third of his wife's lands. *Held*, that, the act of 1898 did not operate retroactively as to the land of a wife, since such operation would have amounted to a disturbance of her vested rights.—*Harris v. Whiteley*, 98 Md. 430, 56 Atl. 823. (See Code 1911, art. 45, §§ 1-7; Id. [vol. 3], art. 45, §§ 4, 7.) [Cited and annotated in 17 L. R. A. (N. S.) 323, on Legislature's power to increase dower rights.]

## § 115. Property of wife at time of marriage.

(a) A deed conveying property in trust for the separate use of a feme sole, with a view to protect it from the marital rights of any future husband, but without reference to a marriage then in contemplation, and without fraud or concealment, will bar the marital rights of the husband.—*Waters v. Tazewell*, 9 Md. 291. [Cited and annotated in 49 L. R. A. (N. S.) 620, on provision in restraint

of marriage as a condition or limitation; in 15 L. R. A. 303, on who are "next of kin."]

### § 116. Gifts to wife.

#### Cross-Reference.

Gifts to husband and wife as community or separate property, see post, § 250.

(a) Under Code 1888, art. 45, § 7 (authorizing a married woman earning any money or other property to hold the same and the profits thereof to her sole use), where a husband deposits money in a savings bank in the name of himself and wife, and there is evidence that he acknowledged that his wife was the owner of such deposit, and it was shown that for many years she had been selling farm products on her own account with his full knowledge and consent, *held* sufficient to show, after the death of the husband, that such deposits were the property of the wife.—*Baker v. Hedrich*, 85 Md. 645, 37 Atl. 363. (See Code 1911, art. 45, § 4; *Id.* [vol. 3], art. 45, § 4.) [Cited and annotated in 12 L. R. A. (N. S.) 357, on deposit in joint names as gift to codepositor.]

(b) A laborer was employed on condition that he would abstain from drink, and would allow his wife to draw his wages, to be used in support of himself and wife and children. Part of the wages were drawn by the wife to support the family, and the balance deposited in a savings bank, in the name of the employer, for the wife. The balances so deposited constituted the fund in dispute. It did not appear that the husband directed or ever knew of the form in which the deposit was made. *Held*, that the wife had no right to this fund as her separate estate, so that she could dispose of it by will or otherwise.—*McCubbin v. Patterson*, 16 Md. 179.

(c) A parol gift of personal property to a feme covert for her separate use, followed by a delivery, is valid.—*Chew v. Beall*, 13 Md. 348.

(d) The words "for her use and benefit," employed in making a gift or transfer of property to a married woman, do not convey a separate estate to her.—*Turton v. Turton*, 6 Md. 375.

### § 117. Property devised or bequeathed to wife.

#### Cross-Reference.

Power to convey, see post, § 179.

### § 118. Property inherited by wife.

### § 119. Property conveyed to or for use of wife.

#### Cross-References.

Conveyances of trust estate without consent of husband, see post, § 184.

Conveyances by husband to or for wife in general, see ante, § 47.

Power to convey trust estate, see post, § 179.

Property transferred by husband to wife constituting separate estate, see "Fraudulent Conveyances," § 172.

#### Annotation.

Conveyance by husband to wife as creating separate estate.—69 L. R. A. 370, note.

(a) Before the adoption of the Code 1860, art. 45, property conveyed to a wife by a deed generally, and not to her separate use, did not create a separate estate in the wife.—*Gebb v. Rose*, 40 Md. 387. (See Code 1911, art. 45, §§ 1-7; *Id.* [vol. 3], art. 45, § 7.) [Cited and annotated in 20 L. R. A. 702, on validity of deed to husband; in 28 L. R. A. (N. S.) 873, on relief from mistake of law as to effect of instrument; in 31 L. R. A. (N. S.) 845, 849, on validity of direct conveyance by wife to husband.]

(b) Under act 1842, c. 293, § 1, a deed of real estate to a married woman vests her with the legal estate in fee, but not to her sole and separate use, and in such property the husband still retains his marital rights.—*Mutual Fire Ins. Co. v. Deale*, 18 Md. 26, 79 Am. Dec. 673. (See Code, art. 45, § 4; *Id.* [vol. 3], art. 45, § 4.) [Cited and annotated in 66 L. R. A. 659, 661, on husband's insurable interest in wife's property; in 69 L. R. A. 375, on effect of conveyance by husband to wife.]

(c) A husband, by deed reciting his wish to reconvey to his wife all property which he acquired by the marriage, "so that the same may be for her exclusive use and benefit, as though she were a feme sole," conveyed all said property, "subject, nevertheless, to any debt that [his wife] was in any manner answerable for at the time of her marriage," to a trustee for the wife's use during the husband's lifetime, to be disposed of in any way which she should direct during her coverture; and, if she should survive her husband and not dispose of the property by her last will, then to descend to her legal heirs and representatives, as if she had never been married, provided that, in case she sur-

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

vived her husband, she should claim no part of his property. This deed was executed by the husband alone. On the same day the trustee, by a deed reciting the execution of the previous deed and the authority therein to convey according to the wife's direction, and that she has directed him to convey to her thereupon, conveyed to her sole use and benefit for her natural life, and after her death, in case she should not dispose of it by will, to her heirs and legal representatives, subject to the provisions in the deed of trust. The husband, after surviving the wife, died. *Held*, that the first deed making no provision for the wife's dying first, if she had died without exercising the power contained in it, and intestate, the title to the personal property would have been restored to the husband; but the second deed, executed by the wife's special direction, must be taken with the first one, to show the intent, which clearly appears from both to have been to extend the title of the wife beyond her life, and to exclude the husband after her death. —*Hutchins v. Dixon*, 11 Md. 29.

(d) A deed of property in trust for a feme covert, executed by her husband, is good, although not accepted in writing by the wife, for the delivery to her and her acceptance bound her as well as the husband. —*Hutchins v. Dixon*, 11 Md. 29.

(e) A deed conveyed real estate to a trustee "in trust," that a married woman "shall and may, during her life, have, hold, use, occupy, and enjoy" the same, "and the rents, issues, and profits thereof," "to her own proper use and benefit, notwithstanding her coverture, and that without the let, trouble, or control of her present or any future husband," or being liable for his debts, "as fully in every respect as if she was sole and unmarried, and, from and immediately after her death, then to and for the use and benefit of her legal heirs and representatives." *Held*, that this deed created but a mere equitable life estate in the married woman, and that it executed the legal estate in her heirs. —*Ware v. Richardson*, 3 Md. 505, 56 Am. Dec. 762. [Cited and annotated in 16 L. R. A. (N. S.) 1153, on statute of uses in United States; in 29 L. R. A. (N. S.) 965, 975, 978, 994, 1025, 1032, 1064, 1095, 1163, on rule in *Shelley's Case*.]

## § 120. Property acquired by husband in trust for wife.

### Cross-Reference.

Right of action by husband or wife or both for injury to property held in trust by husband for wife, see post, § 210.

### Annotation.

Effect of investment by husband in his own name of wife's separate property in real estate, to create trust in her favor. —6 L. R. A. (N. S.) 381; 26 L. R. A. (N. S.) 161, notes.

(a) Where a husband purchases land with his wife's money, a trust results in favor of the wife; but clear and convincing proof that the money belonged to the wife is necessary to establish such trust. —*Thomas v. Standiford*, 49 Md. 181.

## § 121. Property purchased with wife's money.

(a) Where a husband advances money for purchase of articles of household furniture, and is afterwards reimbursed by the wife out of her separate property, in accordance with an agreement made prior to the purchase, the property so purchased belongs to the wife. —*Myers v. King*, 42 Md. 65.

## § 122. Property purchased by wife.

(a) A married woman may, with funds received from time to time from her husband while in prosperous circumstances and possessed of ample means to pay all his debts, purchase and have conveyed to her, in her own name, real estate; and the same cannot be subjected to the payment of the debts of the husband which existed at the time of such purchase and conveyance. —*Warner v. Dove*, 33 Md. 579.

## § 123. (Omitted from the classification used herein.)

## § 124. Proceeds of separate property.

(a) Under Code 1860, art. 45, § 1, which provides that the property real and personal, belonging to a woman at the time of her marriage, and all property which she may acquire or receive, etc., shall be protected from the debts of the husband, and not in any way liable for the payment thereof, the proceeds arising from the sale of real estate belonging to the wife, under a decree for partition, stand in the place of the real estate; and only so much of the proceeds as

may be allowed to the husband in lieu of his interest as tenant by the curtesy is liable to his creditors on the death of the wife.—*Rice v. Hoffman*, 35 Md. 344; *Hoffman v. Rice*, Id. (See Code 1911, art. 45, §§ 1-7; Id. [vol. 3], art. 45, §§ 1, 7.) [Cited and annotated in 19 L. R. A. 258, on legislative power to change or destroy estates by dower, curtesy, etc.; in 23 L. R. A. 649, on what expectant and contingent interests in property are subject to attachment or execution.]

### § 125. Rents and profits of separate property.

#### Cross-Reference.

Right of action of husband or wife or both, see post, § 210.

(a) A wife has no claim against her husband's estate, which had been assigned for the benefit of his creditors, for the income of her separate estate received by him, unless he had promised to repay it.—*Farmers & Merchants Nat. Bank v. Jenkins*, 65 Md. 245, 3 Atl. 302. [Cited and annotated in 56 L. R. A. 834, on burden of proof of husband's debt to wife for property received from her.]

(b) By an antenuptial agreement, a woman gave a sum to her future husband, he agreeing to pay to her during her lifetime interest thereon, such payments to be as of her own sole and separate property; and at her death she was to have the disposal by will of all interest then due, as well as of the principal. Held, that, without any reference to this agreement or power, the interest due at her death was her sole property, and would pass under the residuary clause of her will.—*Mory v. Michael*, 18 Md. 227. [Cited and annotated in 64 L. R. A. 876, on execution by will, of power of appointment.]

(c) Where a farm devised to a married woman, the rent thereof, during her life, cannot be taken on execution for her husband's debts.—*Logan v. McGill*, 8 Md. 461. [Cited and annotated in 23 L. R. A. 649, on what expectant and contingent interest in property are subject to attachment or execution.]

(d) A married woman is entitled to arrears of interest on a mortgage debt, part of her separate estate.—*Miller v. Williamson*, 5 Md. 219.

### § 126. Earnings of wife.

#### Cross-References.

Contracts between husband and wife as to services and earnings, see ante, § 41.

Earnings of wife in general, see ante, § 5. Questions for jury in actions for earnings, see post, § 235.

Right of action by husband or wife to recover, see post, § 208.

Employment of husband as wife's agent or manager fraudulent as against his creditors, see "Fraudulent Conveyances," § 104.

(a) A married woman sued the executor of an estate to recover compensation for services rendered in nursing decedent, at whose house she had lived with her husband while rendering the services. The husband did not claim compensation for these services, and testified that "the nursing she did on her own account." Held, that this did not show that she had elected to act as an independent person in rendering these services, within the meaning of Code 1888, art. 45, § 7, providing that a married woman who, by her skill or industry, shall earn any money or property, shall hold the same to her sole and separate use.—*Poffenberger v. Poffenberger*, 72 Md. 321, 19 Atl. 1043. (See Code 1911, art. 45, §§ 4, 5; Id. [vol. 3], art. 45, § 4.)

### § 127. Damages recovered by wife.

#### Cross-Reference.

See post, § 209.

(a) A judgment obtained by husband and wife against a railroad company for injuries to the wife is exempt from execution for the husband's debts, under Const. art. 3, § 43, providing that "the property of the wife shall be protected from the debts of the husband."—*Clark v. Wootton*, 63 Md. 113.

### § 128. Alimony granted to wife.

### § 129. Estoppel to claim property.

#### Cross-References.

Estoppel in general, see ante, § 62.

To deny validity of mortgage, see post, §§ 169, 171.

Effect of giving false credit to husband, see "Fraudulent Conveyances," § 104.

Estoppel by permitting improvements, see "Estoppel," § 93.

(a) Where plaintiff, two or three months after the execution of a deed of her land to her son, joined in by her husband, learned that it recited that the original purchase money for such land had been paid by the husband, and not by her, but made no complaint as to the falsity of such recital for about three years, she is estopped from asserting it against the son, and claiming a



reconveyance, after the husband's death.—*Kreps v. Kreps*, 91 Md. 692, 47 Atl. 1028.

(b) Where a deed to a son by husband and wife of land belonging to the wife recited that the purchase money for the land had been paid by the husband, instead of by the wife, as recited in the conveyances to her, and she signed the deed with full knowledge of its contents, she is estopped from claiming that such recital is false.—*Kreps v. Kreps*, 91 Md. 692, 47 Atl. 1028.

(c) Under act 1715, c. 47, and act 1766, c. 14, covenants of warranty contained in a married woman's deed, do not estop her from setting up an after-acquired title.—*Preston v. Evans*, 56 Md. 476. (See Code, art. 45, § 4; *Id.* [vol. 3], art. 45, § 4.) [Cited and annotated in 22 L. R. A. 781, on effect of covenants of married women and their estoppel by deed or mortgage.]

#### § 130. Evidence as to ownership.

#### § 131.—Presumptions and burden of proof.

(a) Articles of household furniture were purchased by a husband in pursuance of an agreement with his wife that he should advance the money, and she would reimburse him, which she afterwards did out of her separate estate. *Held*, that, in an action by the wife to recover damages for the illegal seizure and sale of the property under an execution against her husband, the burden of proof was on her to show that it was her separate property when so seized and sold.—*Myers v. King*, 42 Md. 65.

(b) In sealed bonds, payable to a feme covert, the seal presumes a consideration coming from her.—*Bond v. Conway*, 11 Md. 512.

#### § 132.—Admissibility.

(a) On an issue as to whether money deposited in a savings bank belonged to a deceased wife, or to her husband, the will of the wife, in which she sought to dispose of the money as her own, is not admissible as against the husband.—*Taylor v. Brown*, 65 Md. 366, 4 Atl. 888.

#### § 133.—Weight and sufficiency.

(a) In 1890 plaintiff's husband made an assignment for the benefit of creditors, and the assignee testified that all of the property

was not turned over to him. The husband testified that he was sick for several months before the failure, and that the clerks employed involved the business in hopeless insolvency, and the purchaser of the property testified that he turned over all the proceeds to the assignee. In 1900 plaintiff started in business with a stock of goods valued at \$900, on which defendants levied to satisfy a judgment against her husband which was not included in the assignment proceedings. After the husband's failure he secured a government position, from which he barely realized enough to support his family, and plaintiff rented a farm, and sold the products, and loaned the money, and in 1897, purchased it for \$1,200, paying \$700 cash and giving a mortgage for \$500, and in 1900 sold it for \$1,500. Plaintiff was uncontradicted, and her testimony was unimpeached, and the names of the parties to whom she loaned money were given, and also of the firm to whom she had sold crops of tobacco. *Held*, that, the evidence was sufficient to overcome the presumption that the stock of goods was purchased with the husband's money, and hence to entitle plaintiff to a perpetual injunction restraining its sale under the levy.—*Beall v. Frank*, 93 Md. 331, 48 Atl. 1051.

(b) Where a father gives to his daughter in view of her marriage a check, but there is no evidence that at the time of the gift the donor intended that it should be for her sole and separate use, and the gift was made prior to the married woman's act of 1853, the evidence was insufficient to exclude the marital rights of the husband in property purchased therewith.—*Brandt v. Mickle*, 28 Md. 436. (See Code, art. 45, §§ 1-4; *Id.* [vol. 3], art. 45, § 4.)

(c) Upon a bill by the administrator of a husband's estate, against the widow, alleging an attempt by her to fraudulently appropriate to her own use moneys belonging to the husband's estate, it appeared that the wife, before her marriage, had been possessed of moneys, which, after the marriage with the advice and consent of her husband, she loaned on mortgage; the mortgage being given to a trustee for the use of the wife, it being expressed therein that the money was

to be free, clear, and independent from her husband, or any liability from his contracts. *Held*, that, as against the husband, such moneys were the separate property of the wife.—*George v. Spencer*, 2 Md. Ch. 353.

### § 133½. Questions for jury as to ownership.

#### (B) RIGHTS AND LIABILITIES OF HUSBAND.

##### *Cross-References.*

- Assent of husband to charge on separate estate, see post, § 166.
- As to business of wife as sole trader, see ante, § 99.
- Consent of husband to conveyance, see post, § 184.
- Consent of husband to mortgage or pledge, see post, §§ 169, 171.
- Estoppel by deed, see ante, § 62.
- Joinder of husband in conveyance, see post, § 193.
- Joinder of husband in mortgage or pledge, see post, §§ 169, 171.
- Liability of separate estate for husband's debts, see post, §§ 159, 171, 187.
- Reduction of wife's property to possession by husband, see ante, § 11.
- Suits between husband and wife in respect of separate property, see post, § 205.
- Criminal responsibility for trespass, see "Trespass," § 85.
- Restraining interference by husband with separate estate pending suit for divorce, see "Divorce," § 87.
- Right of husband to exercise deceased wife's right of reconversion, see "Conversion," § 22.

### § 134. Vested rights.

##### *Cross-References.*

- Nature of equitable or statutory estate, see ante, § 110.
- Deprivation of property without due process of law, see "Constitutional Law," § 277.
- Impairment of vested rights acquired by marriage, see "Constitutional Law," § 93.

(a) Code 1888, art. 45, §§ 1, 2, provided that the property of a wife should be held for her separate use, as if she were sole, providing that, if she should die intestate, her husband should have a life estate in her real estate. *Held*, that, under the statute the wife held her real estate by a fixed and vested title, subject merely to the expectant interest of the husband.—*Harris v. Whiteley*, 98 Md. 430, 56 Atl. 823. (See Code 1911, art. 45, §§ 1-4, 7; *Id.* [vol. 3], art. 45, §§ 4, 7.) [Cited and annotated in 17 L. R. A. (N. S.) 323, on Legislature's power to increase dower rights.]

(b) Where title to land in fee had been acquired by a wife during her coverture, and before act 1841, c. 161, the husband (children having been born to them alive) became entitled to the possession thereof, and the pendency of profits during their joint lives, and as tenant by the curtesy on her death, if he should survive her; nor is his title divested by said act or by the Code of 1860.—*Porter v. Bowers*, 55 Md. 213. (See Code 1911, art. 45, §§ 1-7; *Id.* [vol. 3], art. 45, §§ 4, 7.) [Cited and annotated in 19 L. R. A. 258, on legislative power to change or destroy estates by dower, curtesy, etc.]

(c) The power of a husband over money to which the wife might become entitled by bequest was suspended by Code 1860, art. 45, § 2, which provides that it shall be held for the wife's separate use.—*Weems v. Weems*, 19 Md. 334. (See Code 1911, art. 45, §§ 1-5; *Id.* [vol. 3], art. 45, § 4.)

(d) The constitutional provision (Const. 1857, art. 3, § 38), which declares that "the General Assembly shall pass laws necessary to protect the property of the wife from the debts of her husband during her life, and for securing the same to her issue after her death," and the acts passed in pursuance thereof do not deprive the husband of any of his common-law rights over her property, but simply protect it from his debts.—*Schindel v. Schindel*, 12 Md. 294. (See Const. 1867, art. 3, § 43.) [Cited and annotated in 49 L. R. A. (N. S.) 91, on right of wife in fault for separation to separate maintenance; in 23 L. R. A. 649, on what expectant and contingent interests in property are subject to attachment or execution.]

### § 135. Husband as trustee for wife.

(a) By a marriage settlement, not creating a trustee for the wife, it was covenanted that the estate of the wife should be reserved to her, free from the control and liability for the debts of the husband, with power to direct the manner in which it should be invested and appropriated. A purchaser of part of her estate gave his notes for the purchase money, payable to her "order," "use of her separate estate," which notes, indorsed in blank, were in possession of the husband who obtained advances on them from defendant; the latter

collecting the same from the maker, and paying over the entire proceeds to the husband, a part on the checks of the wife, and the residue to the husband directly. After the death of her husband, the wife sued to recover from defendant this residue so paid to the husband in his lifetime. *Held*, that the husband became the trustee of his wife, and was entitled to collect these notes, and, if he misapplied their proceeds his estate was liable to the wife therefor. Defendant was not liable, having paid the money to the trustee (the husband) in good faith and without knowledge of any proposed fraudulent misapplication of the fund by him.—*Gover v. Owings*, 16 Md. 91.

(b) Where a trust is created in behalf of a married woman, and there is no legal trustee created by the settlement, her husband becomes her trustee by operation of law, and, as such, has the right to reduce into possession her choses in action for her sole use and benefit; and, like any other trustee, he and his representatives are responsible to her separate estate for whatever funds he may receive belonging to it.—*Gover v. Owings*, 16 Md. 91.

(c) Where an estate in personalty has been created simply for the separate use of the wife, without naming a trustee, the husband is to be considered as trustee for the wife.—*Chew v. Beall*, 13 Md. 348.

(d) A feme covert may have a separate estate in personalty without a trustee, in which case equity will treat the husband as trustee.—*Hutchins v. Dixon*, 11 Md. 29.

### § 136. Right of possession or occupation.

(a) Where a woman, having a leasehold estate in her own right, married, and her husband went into possession, afterwards purchasing the reversion, such purchase did not operate as a merger of the leasehold estate, under act 1853, c. 245, providing for the protection of the wife's separate property from liability for her husband's debts.—*Clark v. Tennison*, 33 Md. 85. (See Code, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.) [Cited and annotated in 28 L. R. A. (N. S.) 1101, on effect of testamentary provision restricting widow to enjoyment during widowhood, upon quantum of estate taken.]

(b) The provisions of act 1853, c. 245, operated to protect the property of a wife, acquired by bequest, from the creditors of the husband, but did not affect the husband's marital rights over it.—*Weems v. Weems*, 19 Md. 334. (See Code, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(c) All property, real and personal, belonging to a married woman at the time of her marriage, and held by her generally, and not limited to her sole and separate use, is, by the act of 1853, merely protected from the debts of the husband, leaving his marital rights over it in other respects unimpaired.—*Bridges v. McKenna*, 14 Md. 258. (See Code, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(d) The acts of 1841, 1842, and 1853, protecting the property of a wife from liability for her husband's debts, do not give her the right to remove it from his custody on her separation from him without cause.—*Schindel v. Schindel*, 12 Md. 108. (See Code, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(e) It is no defense to an action of trespass, for carrying away personal property from plaintiff's house, that the alleged trespass was committed with the approval and at the request of plaintiff's wife, then living apart from her husband, though some of the property belonged to her before marriage.—*Schindel v. Schindel*, 12 Md. 108.

(f) An antenuptial settlement conveyed to a trustee, in trust for the wife, real and personal estate for her sole and exclusive use, and provided that the wife and her assigns should, during her life, have all of the rents and profits to and for their own exclusive use, respectively. Power of disposition of the property was given to the wife. *Held*, that the wife's representatives, on her death, were, as against the husband, entitled to the property conveyed in trust, but not to the issues and profits actually received during the coverture.—*Townshend v. Matthews*, 10 Md. 251.

### § 137. Power to manage or control.

#### Cross-Reference.

Employment of husband as wife's manager or agent fraudulent as against his creditors, see "Fraudulent Conveyances," § 104.

(a) A testator devised certain leasehold property to his daughter, for her sole and separate use and benefit, without being subject to the control or disposal of any husband she might afterwards marry; but there was no limitation over of the property after the death of the devisee. The daughter afterwards married and died intestate, without leaving issue. *Held*, that her husband's rights, as to the property devised, were simply suspended during the coverture, and that, on the death of the wife, the property passed absolutely to the husband in his own right.—*Cooney v. Woodburn*, 33 Md. 320.

(b) Under act 1842, c. 293, § 4, giving to the husband surviving a life estate in slaves which were the wife's separate property, the issue of such slaves born during the continuance of his life estate became absolutely his property.—*McKee v. McKee's Adm'rs*, 17 Md. 352.

(c) Act 1841, c. 161, act 1842, c. 293, and act 1853, c. 245, relating to the rights of married women, simply protect the property of the wife from the debts of the husband during her life, but in no other way interfere with his marital rights and control over it.—*Schindel v. Schindel*, 12 Md. 294. (See Code 1911, art. 45, §§ 1-7; *Id.* [vol. 3], art. 45, §§ 4, 7.) [Cited and annotated in 49 L. R. A. (N. S.) 91, on right of wife in fault for separation to separate maintenance; in 23 L. R. A. 649, on what expectant and contingent interests in property are subject to attachment or execution.]

(d) A deed conveying leasehold property in trust for the separate use of a feme covert, and in case her husband survives her, then he and his assigns to have the rents and profits, "during his natural life only, provided he should continue unmarried after the death of his wife, and from and after his death then to go" over, will not be construed in restraint of marriage, and therefore gives him a life estate, not determinable upon the event of his second marriage.—*Waters v. Tazewell*, 9 Md. 291. [Cited and annotated in 49 L. R. A. (N. S.) 620, on provision in restraint of marriage as a condition or limitation; in 15 L. R. A. 303, on who are "next of kin."]

(e) A settlement of personal property, in trust for a married woman, in case of intestacy, "to such person or persons as would,

by the now existing laws, take an estate in fee simple by descent from her," does not include her surviving husband.—*Waters v. Tazewell*, 9 Md. 291. [Cited and annotated, see supra.]

### § 138. Authority as wife's agent or attorney.

#### Cross-References.

Agency of husband for wife in general, see ante, § 25.

Capacity of married woman to appoint agent, attorney, or trustee in general, see ante, § 58.

Liability for personal injuries inflicted by husband while acting as agent, see post, § 174.

Questions for jury, see post, § 235.

Authority of husband to exchange wife's property as affected by statute of frauds, see "Frauds, Statute of," § 63.

Authority of husband to place improvements on wife's lands as affecting right to mechanic's lien, see "Mechanics' Liens," § 71.

Color of title, see "Adverse Possession," § 81.

Service of notice of intention to terminate tenancy at will on husband of owner, see "Landlord and Tenant," § 120.

#### Annotation.

Proof of husband's agency for wife by evidence of similar acts by husband.—17 L. R. A. (N. S.) 223, note.

(a) A married woman is not estopped to deny her husband's authority to contract for the sale of her real estate by the fact that she was aware that the purchaser was in possession of the land and was making improvements thereon.—*Frazee v. Frazee*, 79 Md. 27, 28 Atl. 1105. [Cited and annotated in 4 L. R. A. (N. S.) 548, on ownership of separate estate, trade or business as condition of married woman's right to contract.]

(b) Where a husband and wife jointly executed a mortgage on her separate property, and on a bill to foreclose an agreement was entered into by the husband for settlement, and in conformity therewith a decree of confession was prepared and entered by an attorney employed by the husband, without the knowledge or consent of the wife, such decree was invalid for want of the wife's consent, as the husband had no authority to employ counsel for her.—*Kerchner v. Kempton*, 47 Md. 568.

(c) A mechanic's lien law (Code 1860, art. 61, §§ 10, 11), provided that, when materials are furnished or work done in erecting a

building on land belonging to a married woman under a contract with her husband, the lien shall not attach unless notice thereof be given to such married woman in writing, etc. The law also provided that when a contract for furnishing materials, etc., is made with any person other than the owner of the land or his agent, the lien shall not attach unless notice in writing be given to the owner or his agent, etc. *Held*, that the provision requiring personal notice to the married woman applies only where the husband erects the building in his character as husband, and in the exercise of his own authority as such, and does not apply where the husband acts as the agent of his wife and by her authority. In such a case, notice to the husband is sufficient; he being the agent of the owner.—*Jarden v. Pumphrey*, 36 Md. 361. (See Code 1911, art. 63, §§ 10, 11.)

**§ 139. Right to proceeds of sales.**

**§ 140. Support of husband.**

**§ 141. Improvements by husband.**

*Cross-References.*

As fixtures, see "Fixtures," § 10.

In fraud of husband's creditors, see "Fraudulent Conveyances," § 106.

Nature as property, see "Property," § 5.

**§ 142. Services of husband.**

*Cross-Reference.*

Donation of services or earnings as fraud on husband's creditors, see "Fraudulent Conveyances," § 104.

**§ 143. Advances by husband.**

**§ 144. Accountability for property and income.**

*Cross-References.*

See ante, §§ 9, 10.

Accord and satisfaction of wife's claim against husband, see "Accord and Satisfaction," § 5.

(a) If a husband receives his wife's money or other separate property with her knowledge and acquiescence, and without an express promise at the time to repay it, no implied assumpsit, either legal or equitable, arises to support a claim against him.—*Stockslager v. Mechanics Loan & Savings Inst.*, 87 Md. 232, 39 Atl. 742. [Cited and annotated in 56 L. R. A. 825, 829, 830, 832, on burden of proof of husband's debt to wife for property received from her; in 43 L. R.

A. (N. S.) 692, on validity of arrangement for household finances as against husband's creditors.]

(b) Where a wife intrusted her funds to the management of her husband, and acquiesced in his use of them in the business of a firm of which he was a member, without taking from him or such firm any express promise to repay such moneys, and the firm afterwards fails, she cannot be regarded as a creditor so as to be entitled to share in dividends in the assets of the firm.—*Jenkins v. Middleton*, 68 Md. 540, 13 Atl. 155.

(c) In the case of money, the separate estate of the wife, appropriated, with her knowledge and consent, by the husband to his own use, the law does not presume an express promise on the husband's part to repay it.—*Taylor v. Brown*, 65 Md. 366, 4 Atl. 888.

(d) Where a husband, with the knowledge and acquiescence of the wife, receives money or property belonging to her separate estate without any express promise at the time to repay it, no implied assumpsit, either legal or equitable, will arise to support her claim therefor against the husband or his estate.—*Grover & Baker Sewing-Mach. Co. v. Radcliff*, 63 Md. 496. [Cited and annotated in 36 L. R. A. 343, on creditor's right to buy property from debtor to satisfy debt; in 56 L. R. A. 832, on burden of proof of husband's debt to wife for property received from her.]

(e) The relation of debtor and creditor may exist between a husband and his wife, growing out of the appropriation by him of her separate estate, and is founded on an agreement by him to repay the money or property so appropriated, and, when such a debt exists, the creditor of the wife, may, with respect thereto, by an attachment, under Code 1860, art. 45, § 7, against her separate estate, make her husband a garnishee.—*Odend'hal v. Devlin*, 48 Md. 439. (See Code 1911, art. 45, §§ 1-5; *Id.* [vol. 3], art. 45, § 4.)

(f) A widow cannot recover, from the estate of her deceased husband, moneys, constituting part of her separate estate, which she had loaned him during coverture, unless there was an express promise or agreement on the part of the husband to repay the same.—*Hill v. Hill*, 38 Md. 183.

(g) A wife, appropriating her own separate property to her husband's use, cannot charge his assets with it.—*Edelen v. Edelen*, 11 Md. 415. [Cited and annotated in 56 L. R. A. 822, on burden of proof of husband's debt to wife for property received from her.]

(h) A claim of a wife against a deceased husband's estate for money of her own separate property, paid for the services of a midwife to her husband's slaves, cannot be maintained.—*Edelen v. Edelen*, 11 Md. 415. [Cited and annotated, see supra.]

(i) An administratrix of her husband, during coverture, with whom her own property was by antenuptial deed held by a trustee to her sole use, cannot charge her husband's estate with maintenance alleged to have been furnished from produce of her land to the husband's slaves, when there is no agreement to repay, although furnished with the wife's knowledge.—*Edelen v. Edelen*, 11 Md. 415. [Cited and annotated, see supra.]

(j) In order to raise the relation of debtor and creditor between husband and wife, a portion of the wife's separate estate must be appropriated by the husband under an agreement to repay it, in cases where such appropriation is with the wife's knowledge and consent.—*Edelen v. Edelen*, 11 Md. 415. [Cited and annotated, see supra.]

(k) Money belonging to the separate estate of a feme covert, and received by her husband without her consent, either expressed or implied, may be charged against his estate in the hands of an administrator.—*Edelen v. Edelen*, 11 Md. 415. [Cited and annotated, see supra.]

(l) A wife, unless she has yearly demanded it, cannot recover from her husband arrears in pin money; but the arrears of interest on a mortgage debt, part of her separate estate, she is entitled to recover.—*Miller v. Williamson*, 5 Md. 219.

#### § 145. Liability to wife for wrongful acts or neglect.

#### § 146. Liabilities to third persons.

(a) A wife authorized an attorney to foreclose a mortgage belonging to her separate estate, and after the foreclosure suit was begun, made a settlement with the mortgagor, and by a written order, signed by her-

self and husband, procured an entry of satisfaction and a cessation of the proceedings. The wife received payment in full satisfaction of her mortgage interest. In a suit for money had and received, brought by the attorney against both husband and wife for his commissions, *held*, that the money belonged to the wife, was received by her and not by the husband, and the latter was not liable.—*Maulsby v. Byers*, 67 Md. 440, 10 Atl. 235.

(b) A simple assent by a husband to an agreement for services made by the wife in regard to her separate estate does not constitute a promise on his part to pay for such services.—*Maulsby v. Byers*, 67 Md. 440, 10 Atl. 235.

#### (C) LIABILITIES AND CHARGES.

##### Cross-References.

Actions to charge separate property, see post, § 215.

Judgment against separate property, see post, § 240.

Authority of husband to place improvements on wife's lands as affecting right to mechanic's lien, see "Mechanics' Liens," § 71.

Capacity of married woman to contract for, or consent to, improvements on land, as affecting right to mechanic's lien, see "Mechanics' Liens," § 68.

Lien of hotel keeper on separate property for board due from husband, see "Innkeepers," § 13.

Obligation of wife to support husband out of her separate property as debt within constitutional inhibition against imprisonment for debt, see "Constitutional Law," § 83.

Provability of claims against wife's estate in bankruptcy, see "Bankruptcy," § 314.

Subrogation to lien on estate, see "Subrogation."

#### § 146½. What law governs.

(a) The proviso to the New Jersey statute, in terms, enabling any married woman to contract, that nothing therein should enable such married woman to guarantee the debt of another, she receiving nothing therefrom, applies to and invalidates a contract of guaranty made in that state by a nonresident married woman.—*Union Trust Co. of New Jersey v. Knabe*, 122 Md. 584, 89 Atl. 1106, 1116; *Same v. Schlens*, Id.

#### § 147. Property subject to liability.

#### § 148. Purchase money and prior incumbrances.

### § 149. Rights of husband's creditors.

#### Cross-References.

Failure to file schedule of separate property, see ante, § 110.

Under marriage settlements, see ante, § 31.

#### Annotation.

Right of husband's creditors to reach fruits of his management of, or services in connection with wife's separate estate or business.—21 L. R. A. 629; 23 L. R. A. (N. S.) 1124, notes.

(a) A married woman, holding property to her sole and separate use, is entitled to have the same protected by injunction from execution levied thereon by the creditors of the husband.—*Niller v. Johnson*, 27 Md. 6.

(b) Under act 1842, c. 293, § 8, a feme covert holding property to her sole and separate use is entitled in equity to relief against execution thereon by creditors of her husband.—*Bridges v. McKenna*, 14 Md. 258. (See Code 1911, art. 45, §§ 1-5; *Id.* [vol. 3], art. 45, § 4.) [Cited and annotated in 30 L. R. A. 118, on injunction against execution sales or other proceedings under final process.]

### § 150. Improvements and materials furnished.

#### Cross-References.

Authority of husband to make improvements as affecting right to mechanic's lien, see "Mechanics' Liens," § 71.

Improvements on wife's land in fraud of husband's creditors, see "Fraudulent Conveyances," § 106.

#### Annotation.

When separate property of married woman chargeable with cost of improvement.—3 L. R. A. (N. S.) 307, note.

Mechanic's lien on building erected by husband on wife's land.—62 L. R. A. 374, note.

(a) Act 1876, c. 399, requires that an application to the county commissioners for the extension of streets and avenues in Baltimore county shall be signed by the "owners of a majority of front feet of ground," etc. *Held*, that, notwithstanding her common-law disability to incumber her land independently of her husband, a married woman, owner of land abutting on a street proposed to be extended, may sign the application with the same force and effect as if she were sui juris.—*Galloway v. Shipley*, 71 Md. 243, 17 Atl. 1023.

(b) Act 1876, c. 399, § 11, authorizing the guardian of an infant owner to sign the application at his own will and pleasure, does not indicate that married women may not sign as to their own property.—*Galloway v. Shipley*, 71 Md. 243, 17 Atl. 1023.

### § 151. Necessaries and family expenses.

#### Cross-References.

Contracts by married women in general, see ante, § 83.

In general, see ante, § 19.

Instructions in actions for necessaries, see post, § 235.

Judgment in actions for necessaries, see post, §§ 238, 239.

Questions for jury in actions for necessaries, see post, § 235.

Making property of married woman liable for debts for necessaries as taking property without due process of law, see "Constitutional Law," § 299.

#### Annotation.

Liability of separate estate of wife for her funeral expenses.—6 L. R. A. (N. S.) 917; 87 L. R. A. (N. S.) 754, notes.

(a) A deed of trust conveying lands to trustees for the sole and separate use and benefit of a feme covert and her heirs, with power to the said feme to sell the whole or any part thereof with the consent of the trustees, the feme has power to charge her separate estate in the hands of a trustee with the payment of an account contracted for necessaries.—*Jackson v. West*, 22 Md. 71. [Cited and annotated in 33 L. R. A. (N. S.) 432, on liability of married women for necessaries.]

### § 152. Contracts in general.

#### Cross-Reference.

Separation agreements, see post, §§ 277-301.

(a) A married woman, on failure to comply with her bid at a trustee's sale, is liable, to the extent of her separate property, for the difference between her bid and the price procured on a resale.—*Capron v. Devries*, 83 Md. 220, 34 Atl. 251.

(b) Where a married woman, by a contract under seal, charged the payment of a debt on her real estate, which was settled on her by a deed of trust, with a power to sell and convey and absolutely dispose of the same by deed, her coverture notwithstanding, a court of equity will enforce such a contract, and decree a sale of the land to pay such charge; and the power given her

to sell necessarily included the power to incumber it by mortgage or charge it by contract.—*Price v. Bigham's Ex'rs*, 7 H. & J. 296.

**§ 153. Contracts between husband and wife.**

**§ 154. Contracts jointly with husband.**

(a) It is competent for a husband and wife to agree to an equitable lien or charge on the separate estate of the wife, secured to her by the Code 1860, by a parol contract made by them jointly.—*Wingert v. Gordon*, 66 Md. 106, 6 Atl. 581. (See Code 1911, art. 45, §§ 1-5; *Id.* [vol. 3], art. 45, § 4.)

**§ 155. Money lent to wife.**

*Cross-References.*

Contracts by married women to borrow money in general, see ante, § 84.

Loans and advances between husband and wife, see ante, § 43.

**§ 156. Bills and notes.**

*Cross-References.*

Between husband and wife, see ante, § 44.  
By married women in general, see ante, § 85.

Judgment notes, see post, § 173.

Presumptions and burden of proof in action on bill or note, see post, § 232.

**§§ 157-159. Guaranty and suretyship.**

*Cross-References.*

Burden of proof in action on note signed by married woman to show execution thereof as surety, see post, § 232.

By married women in general, see ante, § 87.

Defense against bona fide holder of bill or note, see "Bills and Notes," § 366.

(a) Extension of time by the creditors of a husband for the payment of his debts is a valid consideration for an assignment by the wife of the debtor of a policy of insurance on his life, obtained for her sole and separate use and made payable to her and her assigns.—*Emerick v. Coakley*, 35 Md. 188.

**§ 160. Debts incurred in separate business.**

**§ 161. Debts contracted on credit of separate estate.**

(a) A married woman having a separate estate was furnished with articles suitable to her condition in life, for the use of the house in which she dwelt with her husband and family, and both before and after her

husband's death, he being insolvent, promised to pay for them generally, and also as soon as she received dividends from a specified portion of her estate. *Held*, in an action against her after the husband's death, that the jury should not be instructed that there was no evidence that her private and separate estate was pledged originally for the payment of the claim, or that there was no evidence that the goods were furnished on her request and promise.—*Gray v. Crook*, 12 G. & J. 236.

**§ 162. Contracts for benefit of separate estate.**

**§ 163. Debts charged on separate estate.**

**§ 164.—Intent to charge.**

*Cross-Reference.*

See post, § 169.

(a) A married woman may render her separate property liable for her debts; and whether she does so by a given transaction is a question of intent, which may be determined from the obligation creating the debt or by the evidence aliunde.—*Fowler v. Jacob*, 62 Md. 326.

(b) A husband and wife may make a binding agreement for the improvement of the wife's estate; and if, in pursuance of such agreement, the other party thereto lends money on the credit of the estate, it should be charged thereupon. Nor is it indispensably necessary, in order to charge the estate, that the intention should be established by written proof.—*Girault v. Adams*, 61 Md. 1.

(c) In order to charge the debts contracted by a married woman upon her separate estate as a lien in equity, it is necessary that it should affirmatively appear that her contract was made with direct reference to her separate estate, and that it was her intention to charge the same.—*Wilson v. Jones*, 46 Md. 349.

(d) A married woman, having separate estate, cannot affect that separate estate unless the obligation sought to be enforced presents upon its face some evidence of the intent to charge the estate, or there be evidence aliunde tending to prove such intent.—*Koontz v. Nabb*, 16 Md. 549.



(e) An obligation of a married woman cannot be charged against her separate property, unless it appears on the face of the obligation that she intended to charge such separate estate.—*Koontz v. Nabb*, 16 Md. 549.

§ 165.—What constitutes charge.

§ 166.—Joinder or assent of husband.

(a) The separate estate of a married woman is liable in equity for all the debts, incumbrances, or other engagements which she, together with her husband, may by express terms or clear implication charge thereon.—*Hall v. Eccleston*, 37 Md. 510.

§ 167.—Debts of husband.

(a) It is a sufficient consideration for the note of a married woman that it was given in payment of a former note of her husband.—*Frederick-Town Sav. Inst. v. Michael*, 81 Md. 487, 32 Atl. 189, 340, 33 L. R. A. 628.

(b) A married woman's goods found on the demised premises may be distrained for rent due by her husband.—*Emig v. Cunningham*, 62 Md. 458.

(c) Const. 1867, art. 3, § 43, providing that the property of the wife shall be protected from the debts of her husband, does not exempt furniture belonging to the wife of a tenant from distress for rent due from the husband.—*Kennedy v. Lange*, 50 Md. 91.

§ 168. Mortgage or pledge.

*Cross-References.*

By husband as agent, see ante, § 138.

Power of husband to mortgage or pledge, see ante, § 137.

Right of action by husband or wife or both to set aside mortgage, see post, § 210.

As affecting validity of conveyance as to creditors, see "Fraudulent Conveyances," § 61.

Failure to state separate acknowledgment of wife as affecting record of mortgage as notice, see "Mortgages," § 171.

§ 169.—In general.

(a) Since an intent to create a mortgage is essential to the creation of an equitable mortgage, the fact that a married woman, who signed notes with her husband, added, after her signature, the words, "for the payment of which I bind my separate estate," though it made such notes enforceable against her estate in equity, did not consti-

tute them an equitable mortgage creating a lien on her separate property, entitling their holder to preference over holders of other notes enforceable only at law.—*Western Nat. Bank v. National Union Bank*, 91 Md. 613, 46 Atl. 960; *National Union Bank v. Western Nat. Bank*, Id.

(b) In an action to foreclose a mortgage assigned to plaintiff by a married woman to secure a loan to her brother, it appeared that the mortgage was originally taken to secure the price of land belonging to the wife, in the sale of which the husband had joined. The mortgage notes were made payable to her order, and were left in her possession and control while the husband went abroad. The transfer to plaintiff was made while the husband was away, and was done without his actual knowledge or consent. The evidence showed that when informed thereof he expressed his disapproval, and hired an attorney to cause the transfer to be set aside; and there was evidence that he had stated that he would pay plaintiff if he could get sufficient security from his wife's brother, for whose loan the transfer was made. *Held*, that there was no implied consent by the husband to the transfer.—*Giffin v. Blandin*, 80 Md. 130, 30 Atl. 624.

(c) A sublease was made to a married woman, with no declaration or limitation to her separate use, but with full power to sell, mortgage, or otherwise dispose of or incumber the property, and to execute all the necessary deeds and charges and conveyances, without the joinder or consent of her husband. *Held*, that a mortgage made by her alone, without him, was a valid execution of the power, since, in such a grant to a married woman, whether the separate use be limited by the deed or raised by the statute, it is competent to confer such power on her.—*Armstrong v. Kerns*, 61 Md. 364.

(d) In 1866 real estate belonging to A. was sold to his wife by the sheriff under a *fi. fa.* issued on a judgment against A., and a deed was duly executed to her by the sheriff. Afterwards A. mortgaged the same property to B., trustee for the wife, to secure to her money derived from her father's estate and borrowed by A. In 1875 B., as trustee for the wife, and A., conveyed as grantors the

same property by way of mortgage to a building association to secure payment of money loaned to the wife. This instrument, containing the usual mortgage conditions and covenants on the part of the wife, was signed, sealed, and acknowledged by B., the wife, and A., and duly sworn to and recorded. *Held*, in proceedings by the building association to sell the property described in the alleged mortgage, that the instrument constituted in equity a charge upon A.'s wife's estate, and that plaintiff was entitled to enforce the mortgage against the property.—*Frostburg Perpetual Bldg. Ass'n v. Hamill*, 55 Md. 313.

§ 170. (Omitted from the classification used herein.)

### § 171.—Debts of husband.

#### *Cross-References.*

Counterclaims by husband on unliquidated damages in action to foreclose mortgage on wife's property, see "Set-Off and Counterclaim," § 35.

Extending time for payment of husband's debt as discharging lien on wife's property pledged for payment, see "Guaranty," § 56.

(a) Where a married woman gave two single bills and a mortgage on her separate estate, her husband not joining, and the consideration for which was a debt of the husband previously contracted, the mortgage was invalid, since the only mode in which a wife can convey her estate is under Code 1860, art. 45, § 11, requiring the husband to join in the conveyance, whether it be absolute or by way of mortgage.—*Greenholtz v. Haefter*, 53 Md. 184. (See Code 1911, art. 45, § 4; *Id.* [vol. 3], art. 45, § 4.)

(b) An assignment by a wife and her husband, for the benefit of his creditors, of a policy of insurance on his life, obtained for her sole and separate use, and made payable to her and her assigns, is valid.—*Emerick v. Coakley*, 35 Md. 188.

(c) Where a wife appears to have been induced to execute a mortgage of her property for her husband's debts by harshness and threats, and the exercise of unwarrantable authority so excessive as to subjugate and control the freedom of her will, a court of equity will refuse to enforce it against her, even though the mortgagee took no part in

procuring its execution.—*Central Bank v. Copeland*, 18 Md. 305, 81 Am. Dec. 597.

(d) A feme covert, in consideration of an agreement by a creditor of her husband to give him further time to pay his debt, executed jointly with her husband a deed, in the form of a mortgage, of land settled upon trustees for her sole and separate use, to secure its payment. The deed was not acknowledged according to the Acts of Assembly in relation to conveyances of land by feme covert grantors, nor did it purport, nor was it alleged, to be in execution of any power reserved to her by the deed of trust; but, as under that deed she had a right to convey the land as a feme sole, the mortgage was considered as creating a specific lien, and enforced accordingly.—*Brundige v. Poor*, 2 G. & J. 1.

(e) Where a husband and wife, in consideration of a creditor of the husband giving up a lien on the husband's personal property, agreed to execute a mortgage on the wife's separate estate, and, in pursuance to the agreement, executed a deed in the usual form of a mortgage, except that the wife was not examined apart from her husband, the instrument, being clearly intended as a mortgage, was enforceable in equity, notwithstanding its defective execution.—*Tiernan v. Poor*, 1 G. & J. 216, 19 Am. Dec. 225.

### § 172.—Debts of third persons.

### § 173. Confession of judgment.

#### *Cross-Reference.*

Burden of proving invalidity of judgment note, see post, § 232.

### § 174. Torts.

### §§ 175-178. Enforcement.

#### *Cross-References.*

Parties in proceedings to enforce charges or liabilities, see post, § 221.

Proceedings in actions, see post, §§ 203-244.

Default judgment in justice's court, see "Justices of the Peace," § 122.

Enforcement of mechanic's liens, see "Mechanics' Liens," § 263.

Jurisdiction of justices' courts, see "Justices of the Peace," § 39.

Purchasers pendente lite, see "Lis Pendens," § 24.

Removal of improvements to enforce mechanic's lien, see "Mechanics' Liens," § 247.

(a) An equitable lien, a charge on a separate estate of a married woman, secured to her by the Code 1860, art. 45, may be enforced as well by petition in a pending suit, to which they are parties, as by an original bill.—*Wingert v. Gordon*, 66 Md. 106, 6 Atl. 581. (See Code 1911, art. 45, §§ 1-5; *Id.* [vol. 3], art. 45, § 4.)

(b) A contract founded upon proper consideration, by which the husband and wife bind themselves to execute a mortgage of the separate estate of the wife, will be enforced by a court of equity, and such estate held liable for the debt intended to be secured.—*Hall v. Eccleston*, 37 Md. 510.

(c) When a creditor undertakes to reach the property of a married woman, under act 1842, c. 293, § 9, he must show that she earned it by her skill, industry, or personal labor, and must proceed according to the special mode pointed out by the act, and equity has no jurisdiction in such case, except to interfere by injunction in a proper case to preserve the property from waste pending a litigation at law.—*Crane v. Seymour*, 3 Md. Ch. 483. (See Code 1911, art. 45, §§ 1-5; *Id.* [vol. 3], art. 45, § 4.)

(d) Before the separate estate of a married woman can be charged for her engagements, it must be shown that her contract was made with direct reference to such separate estate; and she is not to be regarded with reference to such estate, as a feme sole to all intents and purposes, and bound by any form of contract into which she may please to enter, whether made with reference to such estate or not.—*Conn v. Conn*, 1 Md. Ch. 212.

#### (D) CONVEYANCES AND CONTRACTS TO CONVEY.

##### *Cross-References.*

Between husband and wife, see ante, §§ 38, 45-47.

Contracts by husband and wife with third persons in general, see ante, § 17.

Contracts for necessities and family expenses, see ante, § 19.

Conveyances by husband and wife in general, see ante, § 15.

Conveyances to husband, see ante, § 48.

Mortgage or pledge, see ante, §§ 169-172.

Right of husband to convey, see ante, § 137.

Sales by husband as agent for wife, see ante, § 138.

Acknowledgment of married woman, see "Acknowledgment," §§ 25, 37.

Agreement as to application of purchase money, see "Payment," § 47.

As color of title, see "Adverse Possession," §§ 71, 81.

Bona fide purchasers from husband, see "Vendor and Purchasers," § 230.

Covenant of husband in deed of wife's separate realty as running with the land, see "Covenants," § 57.

Property conveyed by assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 182.

Property conveyed by trust deed for benefit of creditors, see "Assignments for Benefit of Creditors," § 176.

Title and rights of subsequent bona fide purchasers, see "Vendor and Purchaser," § 239.

Validity as affected by duress, see "Deeds," § 71.

Validity as to creditors, see "Fraudulent Conveyances."

#### § 179. Power of alienation in general.

(a) A married woman cannot convey her property to a trustee, with a provision that the income during her life shall be paid to her, but that no part of the fund shall be within the reach of her future creditors.—*Brown v. Macgill*, 87 Md. 161, 39 Atl. 613, 39 L. R. A. 806, 67 Am. St. Rep. 334. [Cited and annotated in 12 L. R. A. (N. S.) 370, on right, as against subsequent creditors, to create trust in settlor's favor for life, and thereafter to heirs or devisees; in 28 L. R. A. (N. S.) 429, on validity of limitation upon power of alienation imposed upon equitable estate of married woman.]

(b) Personal property given to a married woman for her separate use, without restriction as to the mode of disposal, may be disposed of by her as a feme sole.—*Chew v. Beall*, 13 Md. 348.

(c) The wife is to be regarded as a feme sole, in regard to the disposition of her separate estate, only so far as she has been made so by the instrument creating the estate.—*Miller v. Williamson*, 5 Md. 219; *Cooke v. Husbands*, 11 Md. 492. [Cited and annotated in 28 L. R. A. (N. S.) 811, 819, on relief from mistake of law as to effect of instrument.]

#### § 180. What law governs.

##### *Cross-References.*

Construction and operation of marriage settlement, see ante, § 31.

Conveyances, contracts, and other transactions between husband and wife in general, see ante, § 36½.

Disabilities and privileges of coverture, see ante, § 56.

Liabilities and charges on separate property, see ante, § 146½.

Mutual rights, duties, and liabilities in general, see ante, § 2.

Separate property in general, see ante, § 110½.

### § 181. Statutory provisions.

(a) Under Code 1860, art. 45, § 2, enlarging the power of a married woman over her property, and act 1898, c. 457, giving her power to convey without her husband joining with her, a conveyance by her after the passage of the act of 1898 of property previously acquired was not void.—*Beinbrink v. Fox*, 121 Md. 102, 88 Atl. 106. (See Code 1911, art. 45, §§ 1-4; Id. [vol. 3], art. 45, § 4.)

### § 182. Nature and essentials of transactions in general.

(a) Where a husband and wife conveyed land of the wife to a trustee to hold for her separate use during their joint lives, and the deed of trust provided that the wife might convey the land by deed, with the approbation of the trustee testified to by his uniting in the execution thereof, it was held that an agreement to sell, executed by the husband and wife alone, was invalid, and could not be enforced by one who had notice of the deed of trust before mentioned.—*Gelston v. Frazier*, 26 Md. 329.

(b) In the disposition of her separate estate, a married woman is restricted to the particular mode or manner pointed out by the instrument conferring that estate.—*Williams v. Donaldson*, 4 Md. Ch. 414; *Miller v. Williamson*, 5 Md. 219; *Cooke v. Husbands*, 11 Md. 492. [Cited and annotated, see supra, § 179.]

§§ 183-189. (See Analysis.)

### § 190. Conveyances in general.

#### Cross-Reference.

Liability of husband on covenant in conveyance, see "Covenants," § 46.

### § 191.— Form and contents.

#### Cross-Reference.

Assignment of wife's separate property as within statute of frauds, see "Frauds, Statute of," § 63.

### § 192.— Execution by wife.

### § 193.— Joinder of husband.

#### Cross-References.

In mortgage or pledge, see ante, §§ 169, 171.

Conveyance in execution of power, see "Powers," § 80.

(a) A married woman cannot convey her chattels by a bill of sale, unless her husband joins in the deed. Her separate deed is not within Code 1888, art. 45, § 2.—*Hopper v. Callahan*, 78 Md. 529, 28 Atl. 385. (See Code 1911, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(b) Under Code 1888, art. 45, § 2, providing that when the husband has been, upon inquisition, found insane, and the finding remains unreversed and in force, the wife may convey her property as if she were a feme sole, by deed absolute or mortgage, she may so convey her property where the husband's insanity has been ascertained by the special verdict of a jury in a criminal case.—*Hadaway v. Smith*, 71 Md. 319, 18 Atl. 589. (See Code 1911, art. 45, § 13.) [Cited and annotated in 1 L. R. A. (N. S.) 541, on confinement for insanity of one acquitted of crime.]

(c) Unless a wife's separate property has been conveyed to her with the power to dispose of it in a particular manner, she can convey it only as directed by Code 1860, art. 45, § 11; and to render such a conveyance valid, whether absolute or by way of mortgage, the husband must join therein.—*Greenholtz v. Haeffer*, 53 Md. 184. (See Code 1911, art. 45, §§ 1-4; Id. [vol. 3], art. 45, § 4.)

(d) Under Code 1860, art. 45, §§ 1, 2, providing for separate estate of married women, a married woman is not restricted, in the disposition of choses in action, to a joint conveyance with her husband.—*Trader v. Lowe*, 45 Md. 1. (See Code 1911, art. 45, §§ 1-4; Id. [vol. 3], art. 45, § 4.)

### § 194.— Acknowledgment.

#### Cross-Reference.

Acknowledgments of married women, see "Acknowledgment."

### § 194½.— Record.

#### Cross-Reference.

Of mortgage, see ante, § 169.

### § 195.— Construction and operation.

(a) A wife who joins in a deed for the purpose of relinquishing her dower is not liable on the covenants in the deed.—*Nicholson v. Hemsley*, 3 H. & McH. 409. [Cited and annotated in 22 L. R. A. 779, on effect of covenants of married women and their estoppel by deed or mortgage.] §§ 196-202. (See Analysis.)

## VI. ACTIONS.

### Cross-References.

By wife to set aside fraudulent conveyance of husband, see ante, § 6.  
Capacity of married woman to submit to arbitration, see ante, § 60.  
Enforcement of marriage settlement, see ante, § 35.  
For alienation of affections, see post, §§ 322-337.  
For criminal conversation, see post, §§ 340-354.  
For dissolution or partition of community, see post, § 272.  
For penalty for abandonment of wife by husband, see post, § 305½.  
For separate maintenance, see post, §§ 285½-301.  
On separation agreements, see post, § 281.  
Relating to community or separate property or debts, see post, § 270.  
To enforce liabilities against married woman's separate estate, see ante, § 176.  
To set aside agreements for separation of community, see post, § 271.  
Acts and declarations of husband or wife as evidence of conspirator or codefendant and admissible against other spouse, see "Criminal Law," §§ 422, 424.  
Agreement of wife to assist husband in prosecution of suit as champertous, see "Champerty and Maintenance," § 4.  
Authorizing wife to prosecute or defend action in the name of her absent husband as depriving husband of property without due process of law, see "Constitutional Law," § 309.  
Competency of husband or wife as witnesses in actions inter se, see "Witnesses," § 59.  
Conclusiveness, as against wife, of judgment against husband, see "Judgment," § 693.  
Consent of wife as defense to action by husband for trespass, see "Trespass," § 25.  
Contributory negligence of husband imputed to wife, see "Negligence," § 89.  
Contributory negligence of wife as precluding recovery by husband for her injuries, see "Negligence," § 80.  
Elements of damage for injuries to wife, see "Damages," § 38.  
For deceit, see "Fraud," § 29.  
For forcible entry and detainer, see "Forcible Entry and Detainer," § 9.  
For injuries to wife from negligence of fellow servant of husband, see "Master and Servant," § 159.

For mutilation of remains of deceased wife, see "Dead Bodies," § 9.  
For seduction of child, see "Seduction," § 7.  
For wrongful attachment of exempt property, see "Exemptions," § 146.  
For wrongful sale of liquor to spouse, see "Intoxicating Liquors," § 297.  
Inadequate and excessive damages for loss of services of wife, see "Damages," § 183.  
Injuries to wife accompanying husband on land of another by invitation, see "Negligence," § 32.  
In justices' courts, see "Justices of the Peace," § 39.  
Intervention in will contest to protect dower right, see "Wills," § 268.  
Joinder of causes of action, see "Action," §§ 42, 50.  
Jurisdiction of federal courts as dependent on diverse citizenship, see "Courts," § 308.  
Liability of husband or wife to garnishment for the other's debt, see "Garnishment," § 28.  
Married women as involuntary bankrupts, see "Bankruptcy," § 67.  
Married women as persons subject to arrest, see "Arrest," § 8.  
Measure of damages for injuries to or loss of services or society of wife, see "Damages."  
Necessity of joining husband in action by wife for illegal sale of liquor to husband, see "Intoxicating Liquors," § 305.  
Notice to street railroad company of injuries to married woman, see "Street Railroads," § 105.  
On bastardy bond after marriage of prosecutrix and defendant, see "Bastards," § 89.  
Remedies in cases of transfers fraudulent as to creditors or subsequent purchasers, see "Fraudulent Conveyances," §§ 205-328.  
Right of husband to contest will of wife, see "Wills," § 229.  
Right to sue for damages from illegal sale of liquor to husband or wife, see "Intoxicating Liquors," § 297.  
Statutory actions for death of husband or wife, see "Death," §§ 7-101.  
Stay of action by husband to recover wife's property pending her action for divorce, see "Action," § 69.  
Substituted service on husband by leaving copy with wife, see "Process," § 79.  
To enforce mechanic's lien, see "Mechanics' Liens," § 263.  
To foreclose tax lien, see "Taxation," § 643.  
To recover payment made by wife on husband's debt, see "Payment," § 85.  
Verification of claim of wife against city, see "Municipal Corporations," § 1007.

### § 203. Capacity to sue and be sued in general.

(a) Where the husband has permanently deserted the wife and abjured the state, she

can maintain an action for assault in her own name.—*Wolf v. Bauereis*, 72 Md. 481, 19 Atl. 1045, 8 L. R. A. 680.

(b) Married women can be sued when they have united with their husbands on commercial paper, or in contracts or agreements where they are sued jointly.—*Lowe-kamp v. Koechling*, 64 Md. 95, 3 Atl. 35.

(c) A married woman can be sued, when transacting business on her own account, as a feme sole.—*Lowe-kamp v. Koechling*, 64 Md. 95, 3 Atl. 35. (See Code 1911, art. 45, § 5.)

(d) By the act of 1862, femmes covert engaged in business are liable to suit, like femmes sole.—*Ahern v. Fink*, 64 Md. 161, 3 Atl. 32. (See Code 1911, art. 45, § 5.)

(e) Upon a bill filed by a feme covert in her own name without the intervention of a next friend, an injunction should not be granted.—*Heck v. Vollmer*, 29 Md. 507.

#### § 203½. What law governs.

##### Cross-References.

Construction and operation of marriage settlement, see ante, § 31.

Conveyances and contracts to convey separate property, see ante, § 180.

Conveyances, contracts, and other transactions between husband and wife, in general, see ante, § 36½.

Mutual rights, duties, and liabilities, see ante, § 2.

Separate property of married woman, see ante, § 110½.

#### § 204. Statutory provisions.

(a) A feme covert holding property to her sole and separate use, under act 1842, c. 293, § 8, is entitled to relief in equity against execution thereon by creditors of her husband; but she cannot, under this act, sue or be sued at law as a feme sole.—*Bridges v. McKenna*, 14 Md. 258. (See Code 1911, art. 45, §§ 1-5; *Id.* [vol. 3], art. 45, § 4.)

#### § 205. Rights of action between husband and wife.

##### Cross-References.

Issues, pleading, proof and variance in actions between husband and wife, see post, § 229.

Presumptions and burden of proof in actions between husband and wife, see post, § 232.

Right of wife divorced a mensa et thoro to maintain action against husband, see "Divorce," § 314.

##### Annotation.

Recovery by mother against father for money expended in support of children.—38 L. R. A. (N. S.) 508; L. R. A. 1915A, 1137, notes.

Right of wife to sue husband for personal tort.—6 L. R. A. (N. S.) 191; 30 L. R. A. (N. S.) 1153, notes.

Husband's right to sue wife for personal tort.—23 L. R. A. (N. S.) 699, note.

(a) A widow may maintain an action at law against the executors of her deceased husband for money which she loaned to him before marriage, and also for the recovery of the value of securities constituting part of her separate estate, and which she loaned to him during marriage upon his express promise to repay her.—*Barton v. Barton*, 32 Md. 214. [Cited and annotated in 5 L. R. A. (N. S.) 614, on wife's right to sue husband on contract; in 21 L. R. A. (N. S.) 684, on effect of intermarriage between debtor and creditor.]

#### § 206. Rights of action by husband or wife or both.

##### Cross-References.

Appointment of agent by married woman to prosecute suit, see ante, § 58.

Assignment of right of action by wife to husband, see ante, § 45.

For alienation of affections, see post, §§ 324, 325.

Evidence in actions by husband or wife or both, see post, § 232.

Instructions in actions by husband or wife or both, see post, § 235.

Issue, pleading, proof, and variance in actions by husband or wife or both, see post, § 229.

Judgment in actions by husband or wife or both, see post, §§ 238-240.

Right of married woman to maintain action to recover property where prior possession was in husband, see "Forcible Entry and Detainer," § 9.

Testimony as to transactions with persons since deceased, see "Witnesses," § 129.

Under civil damage laws for wrongful sale of liquor to spouse, see "Intoxicating Liquors," § 297.

#### § 207.—In general.

(a) When an action is brought in the name of the state for the use of a feme covert, the fact of her being a feme covert does not make it necessary that the name of her husband should be used as next friend.—*Le Strange v. State*, 58 Md. 26.

(b) Where title to land in fee had been acquired by a wife during coverture, and before act 1841, c. 161, the husband (children having been born to them alive), is alone en-

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

titled to sue for an injury to the possession or profits of the land. For an injury to the inheritance the suit must be in the joint names of himself and wife.—*Porter v. Bowers*, 55 Md. 213. (See Code, art. 45, §§ 1-7; Id. [vol. 3], art. 45, §§ 4, 7.) [Cited and annotated in 19 L. R. A. 258, on legislative power to change or destroy estates by dowers, curtesy, etc.]

(c) The wife's remedies under act 1853, c. 245, § 2, with reference to property which is not held to her sole and separate use, is confined to cases where it is sought to be subjected to the husband's debts, and the form of the remedy must be devised with reference to her disability and the marital rights of the husband.—*Bridges v. McKenna*, 14 Md. 258. (See Code, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(d) Where the property of a married woman at the time of her marriage is held by her generally, and not limited to her sole and separate use, the legal title in such a case being in her husband, an action for interfering therewith must be asserted in a court of law by him alone, or jointly with her where, previous to the married woman's act of 1853, such joinder was necessary.—*Bridges v. McKenna*, 14 Md. 258. (See Code, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(e) Where the husband refuses to interfere, a married woman cannot sue alone or by next friend at law for the protection of property held by her at the time of marriage; but she may sue in equity by next friend, and in such case the husband is a necessary party defendant, so that he may have the opportunity of asserting his marital rights.—*Bridges v. McKenna*, 14 Md. 258.

(f) Under act 1798, c. 101, a husband may sue for the personal estate of his deceased wife, just as if he had administered on her estate.—*Hatton v. Weems*, 12 G. & J. 83. (See Code, art. 45, § 19.)

(g) If real estate of a wife is sold under the act to direct descents, the money paid to the commissioners by the purchasers on the purchase price, as well as the bond given to secure the balance, are choses in action, and therefore, if the commissioners refuse to pay over the money or surrender the bond, the

husband alone must sue to recover the same.—*State v. Krebs*, 6 H. & J. 31..

## § 208.— On contracts.

### Annotation.

Right of married woman to maintain action for board or lodging of, or services rendered to, a third person living in the home.—46 L. R. A. (N. S.) 238, note.

(a) While an action by the husband and wife is proper for unskillful treatment of the wife by a physician, the husband only can sue for mere nonperformance by the physician of a duty imposed by the contract of employment.—*Dashiell v. Griffith*, 84 Md. 363, 35 Atl. 1094.

(b) In articles of agreement entered into between K., on the one part, and H. and wife, on the other, the covenants were made with the husband alone. Held, that the wife could not properly be joined as a coplaintiff with her husband in an attachment suit grounded on alleged breach of his covenants.—*Hough v. Kugler*, 36 Md. 186.

(c) The consideration of an agreement being the sale of the wife's inheritance, in the absence of an express promise the law will raise one to the husband and wife on which the husband may sue, either in his own name or in the names of himself and wife; and, even if there was an express promise to the husband, the wife might be joined as plaintiff.—*Higdon v. Thomas*, 1 H. & G. 138.

(d) Where the consideration of an agreement which did not designate the person to whom the consideration was to be paid was the sale of the wife's inheritance, the law will raise a promise to the husband and wife on which the husband may sue either alone or jointly.—*Higdon v. Thomas*, 1 H. & G. 138.

## § 209.— For torts.

### Cross-References.

Enforcement in federal courts of state statute authorizing suit by married woman for personal injuries, see "Courts," § 371.

Validity of release, see "Release," § 15.

### Annotation.

Right of husband to sue for libel or slander of wife.—45 L. R. A. (N. S.) 767, note.

Right of wife to sue for personal injury to husband.—40 L. R. A. (N. S.) 236, note.

Right of husband to recover for loss of consortium through personal injury to wife.—33 L. R. A. (N. S.) 1042, note.

Wife's right to recover for loss of consortium resulting from negligent injury to husband.—24 L. R. A. (N. S.) 1024, note.

(a) The wife is not given the right to sue independently, for personal injuries, by act 1892, c. 267, which provides that "the property, real and personal, belonging to a woman at the time of her marriage, and all property which she may acquire or receive after her marriage, by purchase, gift, grant, devise, bequest, descent, in a course of distribution, or in any other manner, shall be protected from the debts of the husband."—*Samarzevosky v. Baltimore City Pass. Ry. Co.*, 88 Md. 479, 42 Atl. 206. (See Code 1911, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(b) A married woman cannot sue alone for an assault on her person, under Code 1888, art. 45, § 7, providing that she may acquire separate property, and be sued as a feme sole for debts contracted in the conduct of her business, and that she may sue upon any cause of action in her own name, as if she were a feme sole; this last clause only giving her power to sue alone on causes of action arising out of the business she may be conducting.—*Wolf v. Bauereis*, 72 Md. 481, 19 Atl. 1045, 8 L. R. A. 680. (See Code 1911, art. 45, § 5.)

(c) Code 1860, art. 80, §§ 1-4, makes words imputing unchastity to a feme sole slander, and provides that the husband may sue for words, spoken subsequent to the marriage, imputing unchastity to his wife before marriage. Held, that the husband and wife cannot join in an action, under the statute, but the husband must sue alone.—*Hemming v. Elliott*, 66 Md. 197, 7 Atl. 110. (See Code 1911, art. 45, § 5; art. 88, §§ 1-4.) [Cited and annotated in 45 L. R. A. (N. S.) 769, on defamation of one person as ground of action by another; in 24 L. R. A. (N. S.) 605, on slander and libel in charging woman with unchastity.]

(d) Under Code 1860, art. 45, §§ 1, 4, authorizing a wife to sue alone for the "recovery, security, or protection of the property" belonging to her at marriage, or subsequently received "by purchase, gift, de-

mise, bequest, or in a course of distribution," held, that she could not sue alone for damages for personal injuries.—*Treusch v. Kamke*, 63 Md. 278. (See Code 1911, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(e) In an action by a married woman for personal injuries occasioned by defendant's negligence, she cannot recover for money expended in procuring medical attendance, and other expenses growing out of her injury, since the husband alone has the right of action therefor.—*Northern Cent. Ry. Co. v. Mills*, 61 Md. 355. (See Code, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(f) A husband and wife must sue jointly for slanderous words spoken of the wife, and the claim for damages must be made in behalf of both.—*Newcomer v. Kean*, 57 Md. 121. (See Code, art. 45, § 5; art. 88, §§ 1-4.) [Cited and annotated in 45 L. R. A. (N. S.) 768, 769, on defamation of one person as ground of action by another.]

(g) A married woman may maintain an action for slanderous words imputing a crime committed by her jointly with her husband.—*Nolan v. Traber*, 49 Md. 460, 38 Am. Rep. 277. (See Code, art. 45, § 5; art. 88, §§ 1-4.)

(h) A feme covert may sue in trespass by her next friend without joining her husband.—*Srasburger v. Barber*, 38 Md. 103. (See Code, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

#### § 210.—In respect of wife's separate property.

##### Cross-Reference.

Enforcement of liabilities and charges against wife's separate estate in general, see ante, §§ 175-178.

(a) Husband and wife should join in replevin for property belonging to the wife.—*Herzberg v. Sachse*, 60 Md. 426.

(b) Where a landlord makes a wrongful distress of goods of the tenant's wife, to the possession of which, however, the husband is entitled by virtue of his marital rights, and the husband with the knowledge and acquiescence of the wife, replevies the goods and recovers damages for disturbance of his right of possession, the wife is not precluded thereby from maintaining trespass against the landlord.—*Rogers v. Roberts*, 58 Md. 519.



(c) Judgments, notes, or other securities and accounts taken by a married woman upon the sale or other disposition of her separate estate, or for services rendered or work done by her, and all choses in action held by her at the time of her marriage or acquired subsequently, are property for the recovery, security, or protection of which she can maintain an action at law.—*Barton v. Barton*, 32 Md. 214. [Cited and annotated in 5 L. R. A. (N. S.) 614, on wife's right to sue husband on contract; in 21 L. R. A. (N. S.) 684, on effect of intermarriage between debtor and creditor.]

(d) A married woman may sue alone in actions concerning her separate property.—*Bridges v. McKenna*, 14 Md. 258.

(e) Where property of a married woman is held by her generally after her marriage, she cannot sue alone for injuries thereto, or by next friend if the husband refuses to intervene by suit at law for her protection, under the married woman's act of 1853.—*Bridges v. McKenna*, 14 Md. 258. (See Code, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(f) Property given to the wife to her separate use without a trustee, though perhaps the husband is trustee, is, after his death, and where his representatives or creditors do not interfere, in the possession of the wife, so that she may maintain replevin.—*Chew v. Beall*, 13 Md. 348.

### § 211. Rights of action against husband or wife or both.

#### Cross-References.

As to community property, see post, § 270. Evidence in actions against husband or wife or both, see post, § 232.

Instructions in actions against husband or wife or both, see post, § 235.

Issues, pleading, proof, and variance in actions against husband or wife or both, see post, §§ 229, 230.

Judgment in actions against husband or wife or both, see post, §§ 238-240.

Right to reach indebtedness owing to husband and wife in action against husband alone, see "Garnishment," § 62.

### § 212.— In general.

(a) A female defendant being lately married, it was ordered that the husband be made a party and attachment of contempt issue against him and the wife to answer.—*Taylor v. Gordon*, 1 Bland 132, note.

(b) Where a widow administered upon her first husband's estate, the second husband cannot be made responsible for receipts prior to his marriage, unless she is a party to the bill and those receipts are put in issue by proper allegations.—*Magruder v. Darnall*, 6 Gill 269.

### § 213.— On contracts.

(a) A note signed by husband and wife, payable to his order, is, when indorsed by him, their joint contract, within act 1872, c. 270 (Code 1888, art. 45, § 2), providing that a married woman may be sued jointly with her husband on a contract executed by her jointly with him.—*Taylor v. Welslager*, 90 Md. 409, 45 Atl. 476. (See Code 1911, art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.)

(b) When credit is given to a wife for goods purchased by her, the husband cannot be held liable.—*Jones v. Gutman*, 88 Md. 355, 41 Atl. 792. [Cited and annotated in 65 L. R. A. 536, 543, 547, 549, 550, on husband's liability for necessities furnished wife living with him.]

(c) Code 1888, art. 45, § 2, declaring that a married woman may be sued jointly with her husband on any note, bill, contract, or agreement which she may have executed jointly with him, includes only contracts wholly reduced to writing, and signed by both husband and wife.—*Harvard Pub. Co. v. Benjamin*, 84 Md. 333, 35 Atl. 980, 57 Am. St. Rep. 402. (See Code 1911, art. 45, §§ 5, 15, 20.)

(d) Plaintiff was requested by a married woman to perform certain professional services in regard to her separate estate. Her husband verbally assented to her making the request. In an action against both husband and wife for the value of the services, held, that act 1872, c. 270, providing for suits at law against married women upon "such written contracts or agreements as they may execute jointly with their husbands," does not authorize an action at law against the wife upon a verbal agreement, notwithstanding the husband may have joined in making it.—*Maulsby v. Byers*, 67 Md. 440, 10 Atl. 235. (See Code, art. 45, §§ 5, 15, 20.)

(e) Under act 1872, c. 270, providing that a married woman may be sued jointly with

her husband in a court of law on any note, bond, contract, or agreement which she may have executed jointly with her husband, assumpsit will not lie against the wife at the suit of an attorney in fact to recover reasonable compensation for services rendered her under a power of attorney executed by her and her husband.—*Duckett v. Jenkins*, 66 Md. 267, 7 Atl. 263. (See Code, art. 45, §§ 5, 15, 20.)

(f) Under act 1872, c. 270, providing that a married woman may be sued jointly with her husband "on any note, bill of exchange, single bill, bond, contract, or agreement which she may have executed jointly with her husband," a married woman may be sued on a joint and several bond executed by her jointly with her husband to the state, as his official bond collector of state taxes.—*Smith v. State*, 66 Md. 215, 7 Atl. 49. (See Code, art. 45, §§ 5, 15, 20.)

(g) Under the act of 1872, providing that a married woman may be sued jointly with her husband on a note, bill of exchange, etc., "which she may have executed jointly with her husband," an action may be maintained upon the joint check of a married woman and her husband.—*Wilderman v. Rogers*, 66 Md. 127, 6 Atl. 588. (See Code, art. 45, §§ 5, 15, 20.)

(h) In an action against a married woman to recover rent on a lease to her, authorized by act 1867, c. 223, which provides that she may make such a contract the same as if she were a feme sole, the husband should not be joined as a defendant.—*Worthington v. Cooke*, 52 Md. 297. (See Code 1911, art. 45, § 17.)

(i) Act 1872, c. 270, provides "that any married woman may be sued jointly with her husband, in any of the courts of this state, or before any justice of the peace, on any note, bill of exchange, single bill, bond, contract, or agreement, which she may have executed jointly with her husband." Held, that, under this act, there can be no recovery against a married woman in an action at law against her husband and herself upon their mere verbal agreement to repay money expended by another in the discharge of mechanics' liens and other claims resting upon

her property.—*Sturmfels v. Frickey*, 43 Md. 569. (See Code, art. 45, §§ 5, 15, 20.)

(j) The statute (act 1872, c. 270), which provides that "any married woman may be sued jointly with her husband \* \* \* on any note" which she may have executed, is not retrospective in its operation, and does not authorize a suit at law against husband and wife upon their joint note executed prior to the passage of the act.—*Herbert v. Gray*, 88 Md. 529. (See Code 1911, art. 45, §§ 5, 15, 20.)

#### § 214.—For torts.

(a) In an action for a wife's personal tort the husband is properly joined as defendant.—*Brown v. Kemper*, 27 Md. 666.

#### § 215.—To charge wife's separate property.

#### § 216. Defenses against husband or wife.

##### Cross-References.

Indebtedness of husband to government as set-off against widow's claim under statute, see "United States," § 130.

Mutuality of cross demand, see "Set-off and Counterclaim," § 41.

Set-off against wife of claim for which husband is liable, see "Set-off and Counterclaim," § 33.

(a) It is no defense to an action by a wife for damages for slanderous words, imputing a crime committed by her jointly with her husband, that no crime was charged against her, inasmuch as the law would presume she was acting under coercion.—*Nolan v. Traber*, 49 Md. 460, 33 Am. Rep. 277.

#### § 217. Defenses by husband or wife.

##### Cross-References.

Mutuality of cross-demands, see "Set-off and Counterclaim," § 41.

Set-off, see "Set-off and Counter claim," § 44.

Set-off of claim in different capacity, see "Set-off and Counterclaim," § 46.

(a) If coverture is a defense in an attachment suit, the death of the husband after attachment, but before judgment, will bar it.—*Ahern v. Fink*, 64 Md. 161, 3 Atl. 32.

#### § 218. Jurisdiction.

##### Cross-References.

Jurisdiction of federal court of action between husband and wife, not living apart under legal separation, as dependent on diverse citizenship, see "Courts," § 307.

Jurisdiction of justices' courts, see "Justices of the Peace," § 39.  
Jurisdiction of municipal courts, see "Courts," § 188.

§ 219. (Omitted from the classification used herein.)

§ 220. Time to sue and limitations.

*Cross-References.*

Accrual of right of action, see "Limitation of Actions," § 46.  
Action on administration bond, see "Executors and Administrators," § 537.  
Application of general statute of limitation, see "Limitation of Actions," § 25.  
Bar of debt as to wife as affecting security, see "Limitation of Actions," § 167.  
Conditions precedent affecting limitations against wife's liability for necessities, see "Limitation of Actions," § 65.  
Coverture affecting limitations, see "Limitation of Actions," § 73.  
Demand affecting limitations against husband's liability to wife, see "Limitation of Actions," § 66.  
Existence of trust as affecting limitation, see "Limitation of Actions," § 102.  
Limitations, acknowledgment, new promise, or part payment, see "Limitation of Actions," § 143.  
Limitations of action by wife to recover money lost on gambling contract, see "Gaming," § 45.  
Limitation of actions for relief on ground of fraud, see "Limitation of Actions," § 100.  
New promise within statute of limitations, see "Limitation of Actions," § 143.  
Part payment tolling limitations, see "Limitation of Actions," § 155.  
Pleading limitations, see "Limitation of Actions," §§ 183, 192.

(a) Where a wife's failure to proceed to enforce a claim against her husband in his lifetime was reasonably accounted for, and no person except the wife could have suffered any prejudice by her failure to enforce such claim until after her husband's death, she was not barred of her right to proceed against her husband's estate by laches.—*Cross v. Iler*, 103 Md. 592, 64 Atl. 33.

(b) Where a wife has no remedy by suit at law against her husband, her claim being purely an equitable one, there is no statute of limitations which can operate as a positive bar.—*Bowie v. Stonestreet*, 6 Md. 418, 61 Am. Dec. 318.

(c) Where a complainant claimed that a special Act of Assembly, passed for her relief when a feme covert, authorized the filing

of a bill of review, like a bill of review without leave, for the reversal of a decree for error of law apparent on its face, *held*, that, in conformity with the act first mentioned, such bill, if authorized, must be filed within nine months after the passage of the act, if brought by the husband and wife; if by her after his death, within nine months after that time, or after the knowledge of that event had reached her.—*Berrett v. Oliver*, 7 G. & J. 191.

§ 221. Parties.

*Cross-References.*

Enforcement of liabilities and charges against separate estate in general, see ante, §§ 175-178.  
Bringing in husband as coplaintiff in action by wife, see "Parties," § 51.  
Husband as party to action against wife executrix, see "Executors and Administrators," § 438.  
In action against carrier for loss of or injury to passenger's baggage, see "Carriers," § 408.  
In action by infant wife, see "Infants," § 74.  
In action to confirm or try title, see "Taxation," § 806.  
Right to sue husband alone on note by husband and wife after death of wife, see "Bills and Notes," § 460.  
Striking out wife in action against husband and wife, see "Parties," § 65.  
To suits for cancellation of instruments, see "Cancellation of Instruments," § 35.  
Wife as necessary party to suit to set aside husband's conveyance as fraudulent, see "Fraudulent Conveyances," § 255.

(a) A bill was filed to foreclose a mortgage executed by H. and wife and B. and wife. The latter though made a party defendant was not summoned. *Held*, that as she had a potential right of dower in her husband's interest in the mortgaged premises, and was not before the court, the cause was not ready for final hearing.—*Hurt v. Crane*, 36 Md. 29.

(b) To a bill of foreclosure of a mortgage executed by husband and wife, the wife should be made a party.—*Johns v. Reardon*, 3 Md. Ch. 57.

(c) Where the object of an action is to show that the husband has received full satisfaction for choses in action of his wife, he alone need be made a party.—*Contee v. Dawson*, 2 Bland 264.

**§ 222. Joinder or intervention in actions by others.**

**§ 223. Termination of coverture pending action.**

(a) Under Rev. Code 1878, art. 50, § 146, providing that actions for personal injuries and slander shall not survive against an administrator or executor, an action to recover consequential damages for an assault and battery on plaintiff's wife is not maintainable against the executrix of deceased, as the right depends upon the nature of the action, and not upon the character of damages claimed.—*Ott v. Kaufman*, 68 Md. 56, 11 Atl. 580. (See Code 1911, art. 93, § 104.) [Cited and annotated in 17 L. R. R. (N. S.) 570, on survival of husband's action for damages for personal injury to wife.]

**§ 224. Process.**

*Cross-References.*

Service of notice to quit by handing to tenant's wife, see "Landlord and Tenant," § 291.

Service of notice to quit by leaving it with tenant's wife, see "Landlord and Tenant," § 283.

(a) A summons is not necessary in proceedings under act 1842, c. 293, § 8, which authorizes an attachment against the property of a married woman trading as a feme sole.—*Brent v. Taylor*, 6 Md. 58. (See Code 1911, art. 45, § 5.)

(b) A wife will not be bound by an order of publication unless it go against her as well as her husband.—*Lingan v. Henderson*, 1 Bland 236.

**§ 225. Appearance and representation of wife by attorney.**

(a) Under act 1872, c. 270 (Code 1888, art. 45, § 2), providing that a married woman may be sued jointly with her husband on their joint contract, and may employ counsel and defend such action separately or jointly with him, he has no authority to employ counsel to appear and defend on her behalf; and admission of service and appearance for her by an attorney so employed without her knowledge or counsel does not bind her.—*Taylor v. Welslager*, 90 Md. 414, 45 Atl. 478. (See Code 1911, art. 45, §§ 5, 15, 16, 20.)

§§ 226, 227. (Omitted from the classification used herein.)

**§ 228. Pleading.**

*Cross-References.*

In action to enforce marriage settlement, see ante, § 35.

In actions before justices of the peace, see "Justices of the Peace," §§ 91, 101.

**§ 229.— In general.**

(a) While, in an action brought for personal injuries suffered by the wife, husband and wife must join, no cause of action for which the husband should sue alone should be included.—*Baltimore City Pass. Ry. Co. v. Kemp*, 61 Md. 74; *Northern Cent. Ry. Co. v. Mills*, Id. 355.

(b) As a general rule, a married woman is presumed to be so far under the dominion of her husband that she is not bound by her answer in chancery, made jointly with him.—*Kerchner v. Kempton*, 47 Md. 568.

(c) A married woman, who was possessed of a life estate in real property, obtained a divorce a mensa et thoro, from which the husband appealed. A bill was filed, pending the appeal, for the sale of the real estate and a division of the proceeds among those entitled, to which the wife and husband were made parties. The wife filed a separate answer, consenting to the sale, and agreeing to take a certain portion of the proceeds. Held, that it was not essential to the validity of the decree that the husband and wife should answer jointly.—*Krone v. Linville*, 31 Md. 138.

(d) In an action against a constable for the wrongful taking of goods belonging to a married woman, acquired and held under act 1853, c. 245, a count in trespass or trover in which the husband and wife are joined must aver what interest the wife has in the property, and if such averment is omitted the count is bad; but a count which avers that the defendant wrongfully seized, under writs issued upon judgment against the husband, goods belonging to the wife under act 1853, c. 245, is good, and the husband may be joined in a count which alleges that the property belongs to the wife to her sole and separate use.—*Barr v. White*, 22 Md. 259. (See Code 1911, art. 45, §§ 5, 15, 20.)

(e) Where, in an action against husband and wife, a count in trover in the declaration does not state what interest the wife has in the property, there is a misjoinder of parties, since, in the absence of such statement, the chattels are her husband's *jure mariti*, for which he must sue alone.—*Barr v. White*, 22 Md. 259.

(f) Where suit is brought by husband and wife, the interest of the wife in the subject-matter of the suit must be averred or shown in the declaration.—*Ridgely v. Crandall*, 4 Md. 485.

(g) A feme sole, shortly before marriage, conveyed land to a trustee to be held for her sole and separate use, with power of disposition by will or deed, and provided that, if she died intestate, the trustee should hold the same for himself and his heirs, which deed was recorded; and thereafter, upon her dying intestate subsequent to marriage, the trustee sued her surviving husband and his heirs to quiet title, and the husband, pleaded that he had no knowledge of the deed. *Held*, that it was not necessary for the trustee to plead that the husband had notice of the deed before marriage, as it is not necessary, in such a case, to negative every hypothesis on which a defendant may possibly rest his defense.—*O'Neill v. Cole*, 4 Md. 107.

(h) A wife is bound by her answer.—*Linggan v. Henderson*, 1 Bland 236.

### § 230.— Defense of coverture.

#### Cross-Reference.

Law requiring married women to plead coverture as interfering with vested right, see "Constitutional Law," § 106.

(a) Coverture at the time of an absolute unconditional judgment against defendant cannot be pleaded to *scire facias* thereon where the judgment is valid on its face, and neither it nor the *scire facias* shows defendant's coverture.—*Shupp v. Hoffman*, 72 Md. 359, 20 Atl. 5, 20 Am. St. Rep. 476.

(b) Coverture may be shown in defense under a plea of nonassumpsit.—*Barr v. Perry*, 3 Gill 313.

### §§ 231-233. Evidence.

#### Cross-References.

In actions for alienation of affection, see post, § 333.

In action to enforce marriage settlement, see ante, § 85.

Married woman's separate property, see ante, §§ 131-133.

Of agency of husband as to wife's separate property, see ante, § 138.

Of agency of wife for husband, see ante, § 23¾.

Of invalidity of marriage settlement, see ante, § 34.

Burden of proof of contributory negligence of wife in action by husband against street railroad company, see "Street Railroads," § 112.

Loss of services of wife, see "Damages," § 172.

(a) Under the act of 1872, where a suit is brought upon a joint obligation, the plaintiff must show that the cause of action sued on was executed by a married woman jointly with her husband.—*Wilderman v. Rogers*, 66 Md. 127, 6 Atl. 588. (See Code 1911, art. 45, §§ 5, 15, 20.)

(b) Where a married woman brings a statutory action for her separate earnings, suing by her next friend, she must prove that the labor in which she was engaged was for her own benefit, and independent of her husband, and that she intended the proceeds for her own separate use.—*Neale v. Hermanns*, 65 Md. 474, 5 Atl. 424.

§ 234. (Omitted from the classification used herein.)

### § 235. Trial.

#### Cross-Reference.

Venire de novo, see "Trial," § 341.

(a) In an action against a husband for goods furnished the wife, an instruction assuming that defendant had failed to show that certain gifts of money and property were intended as an allowance to the wife for the purchase of clothing and household supplies is erroneous, when he testified that the money was given to her to "use as she pleased," and that she received the rents, and used them partly "for household affairs."—*Jones v. Gutman*, 88 Md. 355, 41 Atl. 792. [Cited and annotated in 65 L. R. A. 536, 543, 547, 549, 550, on husband's liability for necessities furnished wife living with him.]

(b) An instruction, in an action against a husband for goods furnished the wife, that, if the goods were sold and delivered to the wife upon the husband's credit, and were proper and suitable for one in her station,

the husband is liable, is erroneous, as the agency of the wife is not a question of law, depending on the mere fact of marriage, but is a question of fact, depending on the circumstances of the case.—*Jones v. Gutman*, 88 Md. 355, 41 Atl. 792. [Cited and annotated, see supra.]

(c) Whether a husband, after purchases by his wife on his credit, acquiesced in her conduct, either directly or indirectly, is for the jury, where there is any evidence to show such acquiescence.—*Jones v. Gutman*, 88 Md. 355, 41 Atl. 792. [Cited and annotated, see supra.]

(d) In an action against a husband and wife on their joint notes, where the plea of limitation is sustained as to the wife, but not as to the husband, it is error to direct a verdict for both defendants; such actions being exceptions to the rule that in actions ex contractu against several joint debtors the recovery must be against all or none.—*Wilmer v. Gaither*, 68 Md. 342, 12 Atl. 8, 253.

§ 236. (Omitted from the classification used herein.)

### § 237. Judgment.

#### Cross-References.

Conclusiveness of judgment as against spouse, see "Judgment," § 693.

Defect of parties as ground for equitable relief against, see "Judgment," § 424.

Equitable relief against unauthorized judgment, see "Judgment," § 427.

Evidence in proceedings for equitable relief, see "Judgment," § 461.

Facts and conclusions to be found by court, see "Trial," § 391.

Invalidity as ground for equitable relief, see "Judgment," § 415.

Liabilities discharged by husband's discharge in bankruptcy, see "Bankruptcy," § 428.

Negligence of party as affecting right to equitable relief against, see "Judgment," § 436.

Waiver of right to equitable relief, see "Judgment," § 448.

### § 238.—In general.

#### Cross-References.

Conditions on opening or setting aside default, see "Judgment," §§ 167, 171.

Excuses for default, see "Judgment," § 143.

Parties against whom default judgment may be rendered, see "Judgment," § 98.

Persons entitled to relief against default, see "Judgment," § 148.

Right to open or vacate default judgment in general, see "Judgment," § 138.

(a) Where a feme sole executrix obtains a judgment from which there is an appeal pending, after which she marries, execution on the judgment after affirmance cannot issue without a scire facias making the husband a party.—*Townshend v. Townshend*, 10 G. & J. 373.

### § 239.—Against wife personally.

#### Cross-Reference.

For municipal taxes, see "Municipal Corporations," § 978.

(a) A judgment against a married woman not doing business as a feme sole, rendered on a note in which her husband did not join, is void.—*Hoffman v. Shupp*, 80 Md. 611, 31 Atl. 505.

(b) A judgment against a wife on her promissory note is a nullity.—*Griffith v. Clarke*, 18 Md. 457.

### § 240.—Against wife's separate property.

(a) Under Const. art. 3, § 43, declaring that the property of the wife shall be protected from the debts of her husband, a judgment against a husband is not a lien on real estate held by him and his wife as tenants by the entireties, and they may give a purchaser a clear title unencumbered by the judgment.—*Jordan v. Reynolds*, 105 Md. 288, 66 Atl. 37. [Cited and annotated in 36 L. R. A. (N. S.) 205, on liability of estate by the entireties for husband's debts.]

### § 241. Execution.

#### Cross-Reference.

Appeal from justice's decision on wife's claim to property taken on execution against husband, see "Justices of the Peace," § 173.

(a) An injunction will not be granted, at a wife's instance, to restrain the levy of an execution against personal property in her husband's possession, but claimed by her, unless she clearly establishes the fact of her ownership; nor, in any event, will such injunction issue where the execution is based upon a note given by the husband for cows bought for the wife and used by her on her farm.—*Erdman v. Rosenthal*, 60 Md. 312.

(b) A court of equity will not relieve a wife's estate from being taken to satisfy a

joint judgment against husband and wife for a tort of the wife.—*Brown v. Kemper*, 27 Md. 666.

(c) Execution on a judgment against a married woman by default, in an action on her promissory note, may be restrained by injunction in equity.—*Griffith v. Clarke*, 18 Md. 457. [Cited and annotated in 31 L. R. A. 202, on injunction against judgment for want of jurisdiction or invalidity.]

(d) Where a feme covert sues in equity to protect her separate property as against the execution of creditors of her husband, she should sue alone as plaintiff, by her next friend, and the husband should be made a party defendant.—*Bridges v. McKenna*, 14 Md. 258. [Cited and annotated in 30 L. R. A. 118, on injunction against execution sales or other proceedings under final process.]

#### § 242. Enforcement of judgment against wife's separate property.

#### § 243. Appeal and error.

##### Cross-References.

Aggregate of claims by wife for personal injuries and by husband for expenses incurred as test of appellate jurisdiction, see "Appeal and Error," § 61.

Certiorari to review justice's judgment, see "Justices of the Peace," § 209.

Review on appeal from justice's court, see "Justices of the Peace," § 185.

(a) The wife of the grantee in an alleged fraudulent conveyance of land is properly joined with her husband on his appeal from the judgment.—*Bouldin v. Bank of Commerce*, 21 Md. 44.

#### § 244. Costs.

(a) A feme covert cannot be decreed to pay the costs of proceedings to which her husband was a party.—*Hubbard v. Barcus*, 38 Md. 166.

#### § 245. (Omitted from the classification used herein.)

### VII. COMMUNITY PROPERTY.

##### Cross-References.

Affidavits on application to vacate judgment against, see "Judgment," § 390.

As assets of wife's estate, see "Executors and Administrators," § 38.

As vested right, see "Constitutional Law," § 96.

Check by wife as equitable assignment of community money, see "Assignments," § 49.

Devise or bequest of community property, see "Wills," § 577.

Division on divorce, see "Divorce," §§ 249-288.

Effect of divorce on rights of parties, see "Divorce," § 322.

Forfeiture of community property for nonpayment of taxes, see "Taxation," § 851.

Notice of application to vacate judgment against, see "Judgment," § 388.

Priority of husband and wife as affecting conclusiveness of judgment, see "Judgment," § 693.

Testamentary disposition, see "Wills," § 6.

##### Annotation.

Character of property as community or separate, where title is initiated before marriage, but not completed until after.—46 L. R. A. (N. S.) 1033, note.

Descent of continuance to family of homestead in community property.—56 L. R. A. 46, note.

Division of community property upon annulment of marriage.—36 L. R. A. (N. S.) 845, note.

Effect of divorce on community property in absence of adjudication.—11 L. R. A. (N. S.) 103, note.

Liability of community property for debts.—19 L. R. A. 233, note.

Profits accruing during marriage in connection with property belonging to separate estate of either spouse as community property.—31 L. R. A. (N. S.) 1092, note.

Relative rights of widow and children with reference to community homesteads.—56 L. R. A. 69, note.

#### §§ 246-276. (See Analysis.)

### VIII. SEPARATION AND SEPARATE MAINTENANCE.

##### Cross-References.

Effect of abandonment or separation on right of action in general, see ante, § 203.

Effect of separation on disabilities of coverture, see ante, § 65.

Effect of separation on duty of husband to support, see ante, § 4.

Effect of separation on husband's liability for necessities for wife, see ante, § 19.

Effect of separation on right of husband to manage or control wife's separate property, see ante, § 137.

Effect of separation on right of husband to possession or occupation of wife's separate property, see ante, § 136.

Effect of separation on right to convey separate property, see ante, § 184.

Effect of separation to enable wife to carry on trade or business, see ante, § 93.

Separation pending divorce suit as abandonment, see post, § 304.

Separation under judgment as abandonment, see post, § 304.

Affecting domicile of wife or children, see "Domicile," § 5.

Agreement by wife to pay attorney per cent. of alimony recovered as champertous, see "Champerty and Maintenance," § 5.

Agreement for separation, defense to action for divorce, see "Divorce," § 40.

Alimony in actions for divorce, see "Divorce," §§ 199-288.

Arbitration in case of agreement to separate, see "Arbitration and Award," § 80.

Cancellation of allowance of solicitor's fees because of champertous agreements between wife and her attorney, see "Champerty and Maintenance," § 5.

Contract for payment to wife on separation as contravening public policy, see "Contracts," § 111.

Effect as to amount of damages for wrongful death, see "Death," § 86.

Entry of wife's home by husband after separation as trespass, see "Trespass," § 10.

Judicial separation, see "Divorce."

Right of divorced wife to maintain action for maintenance, see "Divorce," § 316.

Rights of creditors of legatee who has abandoned his wife, see "Wills," § 368.

Stipulations and agreements as to alimony in actions for divorce, see "Divorce," § 236.

Voluntary separation ground for divorce, see "Divorce," § 36.

### § 277. Separation agreements.

#### Cross-References.

Bar to allowance from estate of deceased husband or wife, see "Executors and Administrators," § 188.

Bar to allowance of temporary alimony in suit for divorce, see "Divorce," § 213.

Bar to release of dower, see "Dower," §§ 42, 58.

Effect as to right of inheritance, see "Descent and Distribution," § 62.

Enforcement of contract made in consideration of separation, see "Specific Performance," § 55.

### § 278.—Requisites and validity.

#### Cross-Reference.

Effect of invalidity on other terms of contract, see "Contracts," § 137.

(a) A wife can make no agreement with her husband for her separate maintenance by attorney.—*Wallingsford v. Wallingsford*, 6 H. & J. 485. [Cited and annotated in 49 L. R. A. (N. S.) 91, on right of wife in fault for separation to separate maintenance; in 2 L. R. A. (N. S.) 235, as to whether alimony terminates on husband's death; in 38 L. R. A. (N. S.) 962, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

### § 279.—Construction and operation.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

#### Cross-Reference.

Power of wife to authorize husband to convey share of her real estate allotted to him by separation agreement, see ante, § 138.

(a) Where a husband and wife, after her abandonment by him, enter into an agreement, not amounting to a deed of separation, by which he agrees to pay her a certain sum monthly for her support, his breach thereof revives his liability for her maintenance.—*Barclay v. Barclay*, 98 Md. 366, 56 Atl. 804.

(b) An agreement of separation, made in 1843, between husband and wife, provided that a certain fund in dispute between them should remain as it stood, and that \$75 per year should be paid therefrom to each of the parties during their joint lives, and \$120 per year to the survivor during life, and, upon the death of both, the balance of the fund then remaining should be paid to their children and their representatives equally, to be divided between them. The husband died in 1850, and the wife in 1853. Held, that this agreement was binding on the husband, if not on both; that the wife after his death, having received the sum specified therein up to her death, was bound by the agreement as between herself and the distributees of her husband; and therefore that the fund belonged to the children.—*McCubbin v. Patterson*, 16 Md. 179.

(c) A court of equity will not compel a husband living separate from his wife under an agreement of separation, without a trustee, containing no covenant of indemnity for the wife's debts, and no provision for her to convey a title to real estate set off to her, without his joining in the deed, to consummate a title to a grantee of such real estate under a deed from her alone.—*Lippy v. Masonheimer*, 9 Md. 310.

### § 280.—Subsequent divorce.

(a) Where, in a deed of separation between husband and wife, the husband, with knowledge of the wife's adultery, covenants with her father, a party to the deed, to pay to her for her personal support a certain sum annually during his life, such covenant is not avoided by a subsequent divorce obtained at the instance of the husband.—*Kremelberg v. Kremelberg*, 52 Md. 553. [Cited and annotated in 2 L. R. A. (N. S.) 202, on validity



of contract as to wife's support pending divorce; in 12 L. R. A. (N. S.) 851, on validity of agreement between spouse renouncing marital rights; in 15 L. R. A. (N. S.) 746, on divorce persons' right to contract as to children's custody; in 41 L. R. A. (N. S.) 601, on denial of custody of child to parent for its well-being.]

### § 281.—Actions on agreements.

#### Cross-Reference.

Specific performance, see "Specific Performance," § 83.

(a) On separation of husband and wife under agreement to pay a sum for maintenance to the wife, the Court of Chancery had authority to order the payment of such sums during the joint lives of such parties, unless they should be reconciled.—*Scott's Case*, 2 Bland 568, note. [Cited and annotated in 38 L. R. A. (N. S.) 955, on power, in absence of statute, to decree alimony or maintenance independently of proceedings for divorce.]

### §§ 282-284. Right to allowance for maintenance.

(a) Where a husband has been guilty of cruelty sufficient to warrant a divorce, the court may award alimony in a suit brought for that relief alone.—*Outlaw v. Outlaw*, 118 Md. 498, 84 Atl. 383.

(b) When a husband and wife are separated by his fault, he must make reasonable provision for her.—*McCaddin v. McCaddin*, 116 Md. 567, 82 Atl. 554. [Cited and annotated in 38 L. R. A. (N. S.) 963, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

(c) The living together of a husband and wife is so essential to the maintenance of the marital relation that the law will not encourage their separation by granting alimony to the wife when living apart from her husband, except when he has abandoned or deserted her, or has been guilty of such cruel or vicious conduct that she cannot with safety or decency consort with him; it being required that the causes justifying her living apart from him are grave and weighty, and such as render performance of the marital duties impossible.—*Taylor v. Taylor*, 108 Md. 129, 69 Atl. 632. [Cited and annotated in 38 L. R. A. (N. S.) 962, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

(d) The causes which will justify a wife's separation from her husband must be grave

and weighty, and such as show an absolute impossibility that the duties of the married life can be discharged.—*Schindel v. Schindel*, 12 Md. 294. [Cited and annotated in 49 L. R. A. (N. S.) 91, on right of wife in fault for separation to separate maintenance; in 23 L. R. A. 649, on what expectant and contingent interests in property are subject to attachment or execution.]

(e) The living of a married woman separate and apart from her husband, in order to entitle her to a decree for separate maintenance, must be without her fault.—*Wallingsford v. Wallingsford*, 6 H. & J. 485. [Cited and annotated in 49 L. R. A. (N. S.) 91, on right of wife in fault for separation to separate maintenance; in 2 L. R. A. (N. S.) 235, as to whether alimony terminates on husband's death; in 38 L. R. A. (N. S.) 962, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.] *Schindel v. Schindel*, 12 Md. 294. [Cited and annotated, see supra.]

(f) A conveyance of personal property by the husband, which would be valid against the claim of the wife in case she survived him, is good against her claim for a maintenance during their separation.—*Dunnock v. Dunnock*, 3 Md. Ch. 140. [Cited and annotated in 37 L. R. A. 473, on effect of insolvency statutes on mortgage or sale preferring creditors; in 38 L. R. A. (N. S.) 962, on power, in absence of statute, to decree alimony or maintenance independently of proceedings for divorce; in 40 L. R. A. (N. S.) 85, on pendency of suit for divorce or separation as bar to another.]

(g) The fact that the complainant had filed a bill in the equity side of the County Court for a divorce and alimony, before bringing her bill in the Court of Chancery for a provision for her maintenance out of her husband's estate, without asking for a divorce, is an insuperable objection to her obtaining relief in the latter court.—*Dunnock v. Dunnock*, 3 Md. Ch. 140. [Cited and annotated, see supra.]

(h) Cruel and violent treatment of the wife by the husband, and his refusal to permit her to live with him, is sufficient ground to direct him to pay her a certain sum as alimony.—*Hewitt v. Hewitt*, 1 Bland 100. [Cited and annotated in 38 L. R. A. (N. S.) 962, on power, in absence of statute, to decree alimony or maintenance independently of proceedings for divorce.]

(i) Cruel and violent treatment of his wife

by a husband will support a bill by her for alimony, according to the circumstances of the parties.—*Hewitt v. Hewitt*, 1 Bland 100. [Cited and annotated, see supra.]

### § 285. Actions for separate maintenance.

#### Cross-References.

Necessity of intervention of *prochein ami*, see ante, § 205.

Jurisdiction to issue writ of *ne exeat*, see "Ne Exeat," § 4.

Recovery as claim against deceased husband's estate, see "Executors and Administrators," § 202.

### § 285½.—Right of action.

(a) Under Code, art. 16, § 14, the court may award alimony to a wife, without decreeing divorce, where the allegations in her bill for alimony set forth facts justifying a divorce.—*Outlaw v. Outlaw*, 118 Md. 498, 84 Atl. 383.

(b) A court of equity has power to entertain an application by a wife against her husband for alimony, though she does not ask for a divorce.—*McCaddin v. McCaddin*, 116 Md. 567, 82 Atl. 554. [Cited and annotated in 38 L. R. A. (N. S.) 963, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

(c) A court of equity has power to entertain an application by a wife against her husband for alimony.—*Taylor v. Taylor*, 108 Md. 129, 69 Atl. 632. [Cited and annotated, see post, § 287.]

(d) The wife's right to alimony is an incident of marriage, and depends entirely upon the status of the parties, which status must be determined by the courts of the state in which they are domiciled; hence a state court has no jurisdiction to pass upon and determine the relative duties of a husband and wife, both of whom reside in another state.—*Keerl v. Keerl*, 34 Md. 21. [Cited and annotated in 59 L. R. A. 178, on conflict of laws on divorce; in 38 L. R. A. (N. S.) 963, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

(e) Under act 1777, c. 12, § 14, declaring that the chancellor may hear and determine all causes for alimony in as full and ample manner as such causes could be heard and determined by the law of England in the ecclesiastical courts there, equity, on a prop-

er showing, will grant the wife alimony for a suitable maintenance out of the husband's estate, even when a divorce *a mensa et thoro* is not asked for.—*Dunnoch v. Dunnoch*, 3 Md. Ch. 140. (See Code 1911, art. 16, § 14.) [Cited and annotated, see supra, §§ 282-284.]

### § 286.—Nature and form.

### § 287.—Grounds.

(a) The living together of a husband and wife is so essential to the maintenance of the marital relation that the law will not encourage their separation by granting alimony to the wife when living apart from her husband, except when he has abandoned or deserted her, or has been guilty of such cruel or vicious conduct that she cannot with safety or decency consort with him; it being required that the causes justifying her living apart from him are grave and weighty, and such as render performance of the marital duties impossible.—*Taylor v. Taylor*, 108 Md. 129, 69 Atl. 632. [Cited and annotated in 38 L. R. A. (N. S.) 962, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

### § 287½.—Conditions precedent.

### § 288.—Defenses.

#### Cross-Reference.

Denial of right to defend as deprivation of property without due process of law, see "Constitutional Law," § 305.

(a) A husband who abandoned his wife and failed to support her is not entitled to defeat a suit by her for alimony by a mere assertion that he is willing to support her, if she will live with him.—*McCaddin v. McCaddin*, 116 Md. 567, 82 Atl. 554. [Cited and annotated, see supra, § 285½.]

### § 289.—Jurisdiction.

#### Cross-Reference.

See ante, § 285½.

### § 290.—Process in general.

### § 291.—Arrest.

### § 292.—Attachment.

### § 293.—Injunction.

(a) A wife, in an action for separate maintenance, is not entitled to an injunction to restrain her husband from interfering with property acquired by her since the adoption of Code 1860, art. 45, § 2, in the absence of averments that defendant has made efforts

to collect the rents therefrom, or that plaintiff is in danger of irreparable injury in consequence of some act of defendant.—*Wagoner v. Wagoner*, 77 Md. 189, 26 Atl. 284. (See Code 1911, art. 16, § 14; art. 45, §§ 1-5; Id. [vol. 3], art. 45, § 4.) [Cited and annotated in 38 L. R. A. (N. S.) 963, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

(b) Where separate maintenance is asked on the ground of drunkenness and failure to support plaintiff, the latter is not entitled to such injunction as to property acquired by her prior to 1861, in the absence of any averment that she was compelled by defendant's misconduct and cruelty to separate from him.—*Wagoner v. Wagoner*, 77 Md. 189, 26 Atl. 284. [Cited and annotated, see supra.]

#### § 293½.—Bond.

#### § 294.—Receivers.

#### § 295.—Temporary allowance and counsel fees.

(a) In a suit by a wife living apart from her husband for permanent alimony, an order granting the wife alimony pendente lite and counsel fees is proper, and will not be disturbed on the refusal, on final determination of the cause, to grant the wife permanent alimony as prayed for.—*Taylor v. Taylor*, 108 Md. 129, 69 Atl. 632. [Cited and annotated, see supra, § 287.]

#### § 296.—Pleading.

#### § 297.—Evidence.

##### Cross-Reference.

Foreign judgment as evidence of abandonment, see "Judgment," § 822.

(a) In a suit by a wife for alimony without divorce, evidence held to support a finding that the husband abandoned her and failed to support her.—*McCaddin v. McCaddin*, 116 Md. 567, 82 Atl. 554. [Cited and annotated in 38 L. R. A. (N. S.) 963, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

(b) In a suit by a wife living apart from her husband, evidence examined, and held insufficient to show such cruelty or ill-treatment by the husband to the wife as to justify their living apart so as to authorize the granting of permanent alimony to the wife.

—*Taylor v. Taylor*, 108 Md. 129, 69 Atl. 632. [Cited and annotated, see supra, § 287.]

(c) On a bill for alimony by a wife, for abandonment and refusal to support, evidence or admissions to show the value of the husband's property are necessary.—*Wallingsford v. Wallingsford*, 6 H. & J. 485. [Cited and annotated in 49 L. R. A. (N. S.) 91, on right of wife in fault for separation to separate maintenance; in 2 L. R. A. (N. S.) 235, as to whether alimony terminates on husband's death; in 38 L. R. A. (N. S.) 962, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

#### § 298.—Amount of award.

(a) An allowance of alimony to a wife suing for alimony without divorce held not excessive under the circumstances.—*McCaddin v. McCaddin*, 116 Md. 567, 82 Atl. 554. [Cited and annotated, see supra, § 297.]

#### § 298½.—Trial.

(a) Though, under act 1777, c. 12, § 18, which was not repealed by act 1841, c. 262, the Court of Chancery will, upon a proper case shown, grant the wife alimony, or a suitable maintenance out of the husband's estate, even when a divorce is not asked for, yet the court will not in such case investigate the character or alienations of property by the husband, so as to compel his alienee to pay the allowance to the wife.—*Dunnock v. Dunnock*, 3 Md. Ch. 140. (See Code, art. 16, § 14.) [Cited and annotated in 37 L. R. A. 473, on effect of insolvency statutes on mortgage or sale preferring creditors; in 38 L. R. A. (N. S.) 962, on power, in absence of statute to decree alimony or maintenance independently of proceedings for divorce; in 40 L. R. A. (N. S.) 85, on pendency of suit for divorce or separation as bar to another.]

#### § 298¾.—Disposition of property.

#### § 299.—Judgment, and enforcement thereof.

##### Cross-Reference.

Commitment for contempt for failure to obey judgment as constituting imprisonment for debt, see "Constitutional Law," § 83.

(a) An award for support, in a suit by a wife for alimony without divorce, held not erroneous as unlimited, but subject to the limitations that payment will cease on the death of either party, or on their coming

together again.—*McCaddin v. McCaddin*, 116 Md. 567, 82 Atl. 554. [Cited and annotated, see *supra*, § 297.]

(b) A decree allowing a wife alimony without divorce may be subsequently modified as circumstances require.—*McCaddin v. McCaddin*, 116 Md. 567, 82 Atl. 554. [Cited and annotated, see *supra*, § 297.]

§ 299½.—**Custody of children.**

§ 300.—**Appeal and error.**

**Cross-References.**

Appellate jurisdiction as dependent on whether case involves freehold, see "Courts," § 213.

Review of decision as dependent on finality, see "Appeal and Error," § 77.

§ 301.—**Costs.**

(a) If a husband forces his wife to abandon him by his vicious conduct, or influences her to do so by fraud and deceit, and refuses to permit her to return, his conduct amounts in law to an "abandonment" of her by him.—*Taylor v. Taylor*, 108 Md. 129, 69 Atl. 632. [Cited and annotated in 38 L. R. A. (N. S.) 962, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

## IX. ABANDONMENT.

**Cross-References.**

Abandonment of wife by husband, effect as gift to her of property in her possession, see ante, § 49½.

As removal of disabilities of wife, see ante, § 66.

Duty to support family, see ante, § 4.

Effect of abandonment on disabilities of coverture, see ante, § 65.

Effect of abandonment on power to convey separate property, see ante, § 184.

Effect of abandonment on right of wife to mortgage separate property, see ante, § 169.

Effect of abandonment or separation on right of action in general, see ante, § 203.

As affecting limitations against wife, see "Limitation of Actions," § 73.

As affecting right of widow to allowance from husband's estate, see "Executors and Administrators," § 188.

Competency of wife as witness, see "Witnesses," § 61.

Costs in prosecutions therefor, see "Costs," §§ 284-325.

Effect on wife's right to acquire legal settlement, see "Paupers," § 19.

Excessive fines, see "Criminal Law," § 1214.

Former jeopardy, see "Criminal Law," §§ 163, 180, 202.

Ground for divorce, see "Divorce," § 37.

Laws providing for renewal of suspended prosecution for seduction on abandonment of prosecutrix after marriage as denying right to speedy trial, see "Criminal Law," § 574.

Limitations, see "Criminal Law," § 149.

Pleas, see "Criminal Law," § 295.

Pleas of former jeopardy, see "Criminal Law," § 292.

Preliminary warrant, see "Criminal Law," § 207.

Right to jury trial, see "Jury," §§ 14, 19.

**Annotation.**

Effect of husband's own adultery to prevent him from relying on wife's adultery as defense to an action for support.—19 L. R. A. (N. S.) 468, note.

§ 302. **Nature of offense.**

§ 303. **Statutory provisions.**

**Cross-References.**

Effect of statute making it a misdemeanor to fail to support wife on civil liability for nonsupport, see ante, § 4.

As vagrancy, see "Vagrancy," § 1.

Subject and title of act, see "Statutes," § 118.

§ 304. **Acts or omissions constituting abandonment.**

(a) If a husband forces his wife to abandon him by his vicious conduct, or influences her to do so by fraud and deceit, and refuses to permit her to return, his conduct amounts in law to an "abandonment" of her by him.—*Taylor v. Taylor*, 108 Md. 129, 69 Atl. 632. [Cited and annotated, see *supra*, § 301.]

§§ 305-311. (See Analysis.)

§ 312. **Indictment or information.**

**Cross-References.**

Aider by verdict, see "Indictment and Information," § 202.

Duplicity, see "Indictment and Information," § 125.

§ 313. **Evidence.**

**Cross-References.**

Evidence at former trial as evidence in prosecution for nonsupport, see "Criminal Law," § 545.

Hearsay evidence, see "Criminal Law," §§ 419, 420.

(a) In a suit by a wife living apart from her husband for alimony, evidence examined, and held insufficient to show abandonment by the husband.—*Taylor v. Taylor*, 108 Md. 129, 69 Atl. 632. [Cited and annotated, see *supra*, § 301.]

**§ 314. Trial.***Cross-References.*

Application for new trial, see "Criminal Law," § 956.

Necessity of instructions in general, see "Criminal Law," § 770.

**§§ 315-321. (See Analysis.)****X. ENTICING AND ALIENATING.***Cross-References.*

Competency of husband or wife as witness in action for alienation of affections, see "Witnesses," § 58.

Consideration for settlement of claim, see "Compromise and Settlement," § 9.

Joinder of causes of action, see "Action," § 40.

Misjoinder of causes of action, see "Action," § 38.

Restraining alienation, see "Injunction," § 94.

**§ 322. Nature and form of remedy.****§ 323. Right of action.****§ 324.— By husband.**

(a) In an action for alienation of affections plaintiff could recover if defendant wrongfully alienated the affection of plaintiff's wife, whereby he lost the companionship and assistance of his wife, although there was no evidence of adultery between plaintiff's wife and defendant.—*Callis v. Merrieweather*, 98 Md. 361, 57 Atl. 201, 103 Am. St. Rep. 404.

**§ 325.— By wife.***Annotation.*

Right of wife, under modern married women's acts, to sue for alienation of the affections of her husband.—4 L. R. A. (N. S.) 643; 29 L. R. A. (N. S.) 842; L. R. A. 1915A, 67, notes.

(a) Under Code 1888, art. 45, § 5, as amended by act 1898, c. 457, giving married women the right to sue for torts committed against them, a wife may sue for alienation of the husband's affections, though the cause of action arose prior to the statute.—*Wolf v. Frank*, 92 Md. 138, 48 Atl. 132, 52 L. R. A. 102. (See Code 1911, art. 45, §§ 5, 15, 20.) [Cited and annotated in 29 L. R. A. (N. S.) 843, on wife's right under enabling acts to sue for alienation of affections.]

**§ 326. Defenses.***Annotation.*

Divorce or separation as affecting action for alienation of affections or criminal conversation.—46 L. R. A. (N. S.) 1084, note.

**§ 327. Persons liable.***Annotation.*

Liability of parent for causing separation of husband and wife.—9 L. R. A. (N. S.) 322, note.

**§§ 328-332. (See Analysis.)****§ 333. Evidence.***Cross-References.*

Admissions, see "Evidence," § 248.

Evidence of character of plaintiff, see "Evidence," § 106.

Hearsay evidence, see "Evidence," § 317.

Privileged communications, see "Witnesses," §§ 184-223.

Res gestæ, see "Evidence," §§ 118-128.

Right of wife to testify to reason for refusing to live with plaintiff, see "Evidence," § 151.

(a) While, in an action for alienation of a husband's affections, evidence of statements to the plaintiff by her husband as to the wishes of the defendant is inadmissible as proof of the alienation, either because of its hearsay character or because a mere expression of opinion made out of the presence of the defendant, evidence of such conversations between husband and wife is properly admitted to show the state of the husband's mind and the state of feelings between husband and wife by reason of efforts and influence of defendant, otherwise proven.—*Hillers v. Taylor*, 116 Md. 165, 81 Atl. 286.

(b) Where, in an action by a wife for alienation of her husband's affections, the state of the husband's feelings toward his wife was plainly shown, the admission in evidence of statements of the husband to the wife in the absence of defendant that defendant objected to arranging a room in a certain way on the wife visiting the husband while he lived at the home of defendant, and that defendant did not want the wife there, could not be justified on the ground that it showed the state of the husband's feeling toward the wife, but was prejudicial to defendant as hearsay evidence.—*Hillers v. Taylor*, 108 Md. 148, 69 Atl. 715. [Cited and annotated in 29 L. R. A. (N. S.) 843, on wife's right under enabling acts to sue for alienation of affections.]

(c) In an action by a wife for alienation of her husband's affections, accomplished by defendant debauching him, plaintiff to recover need not prove any act of illicit intercourse between defendant and plaintiff's husband,

but the jury must consider the opportunity for the commission of the act and the conduct of the parties and all the circumstances, and then determine whether it should convince unprejudiced persons of the guilt of the parties.—*Hillers v. Taylor*, 108 Md. 148, 69 Atl. 715. [Cited and annotated, see supra.]

(d) In an action by a wife for the alienation of her husband's affections, accomplished by defendant debauching plaintiff's husband, plaintiff has the burden of establishing the act of adultery by the same weight of evidence which controls in divorce cases.—*Hillers v. Taylor*, 108 Md. 148, 69 Atl. 715. [Cited and annotated, see supra.]

(e) Where plaintiff sued for the alienation of her husband's affection, it was error not to admit evidence that plaintiff had had improper relations with another prior to the husband's leaving home, and that the husband knew it, since, even if it should not appear the husband left home because of such relations, the same were material as to plaintiff's damages.—*Wolf v. Frank*, 92 Md. 138, 48 Atl. 132, 52 L. R. A. 102. [Cited and annotated in 29 L. R. A. (N. S.) 843, on wife's right under enabling acts to sue for alienation of affections.]

(f) Where plaintiff sued for alienation of her husband's affections, it was not error not to permit defendant to show that a witness had heard defendant tell plaintiff's husband to leave defendant's home, and that the witness had seen defendant push the husband out of doors; the offer of proof not showing but that the occurrences might have been subsequent to the suit, and it not appearing they might not have resulted from a mere quarrel, and hence not have tended to meet plaintiff's proof.—*Wolf v. Frank*, 92 Md. 138, 48 Atl. 132, 52 L. R. A. 102. [Cited and annotated, see supra.]

#### § 334. Damages.

#### § 335. Trial.

(a) Where, in an action by a wife for alienation of her husband's affections, defendant, without objection, offered in evidence a paper purporting to be a formal adoption by the husband of defendant as his child, and the evidence showed that at the date of the execution of the paper the hus-

band was 52 years old and defendant 35, and the husband testified that the adoption papers were drawn up with a view of preventing people talking about him and defendant because they went together, the court properly charged that the evidence was insufficient to prove any legal adoption of defendant by the husband.—*Hillers v. Taylor*, 108 Md. 148, 69 Atl. 715. [Cited and annotated, see supra, § 333.]

(b) Where, in an action by a wife for alienation of her husband's affections, the declaration alleged that defendant debauched the husband, and thereby alienated his affections, an instruction that to establish the charge of adultery the circumstances must lead to it as a necessary conclusion, and appearances equally capable of two interpretations, one an innocent one, will not justify the presumption of guilt, was properly refused because incomplete, for the jury must consider the conduct of the parties, their opportunities for the commission of the act, and all the circumstances of the case, and then determine whether it should convince an unprejudiced and cautious mind of the guilt of the parties.—*Hillers v. Taylor*, 108 Md. 148, 69 Atl. 715. [Cited and annotated, see supra, § 333.]

§§ 336-339. (See Analysis.)

### XI. CRIMINAL CONVERSATION.

#### Cross-References.

Abatement of action by death of defendant, see "Abatement and Revival," § 58.  
Competency of husband or wife as witness in action by other, see "Witnesses," § 58.  
Discharge of judgment by debtor's discharge in bankruptcy, see "Bankruptcy," § 424.  
Newly discovered evidence as ground for equitable relief, see "Judgment," § 446.

#### § 340. Nature and form of remedy.

#### § 341. Right of action.

#### Annotation.

Right of action for criminal conversation or enticement of wife as asset of bankrupt.—43 L. R. A. (N. S.) 941, note.

#### § 342. Defenses.

(a) Connivance by a husband, sufficient to bar an action for criminal conversation, must be such conduct as when, subjected to the test of reasonable human transactions, shows an intention to connive, evidenced by

his active or passive assent to transactions tending to convince an ordinarily prudent person of his wife's offense.—*Kohlhoss v. Mobley*, 102 Md. 199, 62 Atl. 236.

§§ 343-346. (Omitted from the classification used herein.)

§ 347. Pleading.

§ 348. Evidence.

*Cross-Reference.*

Privilege of witness, see "Witnesses," § 297.

*Annotation.*

Evidence of character of husband or wife in action for criminal conversation.—14 L. R. A. (N. S.) 749, note.

(a) In an action for criminal conversation, evidence held to establish the husband's connivance or implied consent to the wife's misconduct as matter of law.—*Kohlhoss v. Mobley*, 102 Md. 199, 62 Atl. 236.

(b) In an action for criminal conversation with plaintiff's wife, an actual marriage must be proved. Evidence of cohabitation and reputation is not sufficient.—*Fornshill v. Murray*, 1 Bland 479, 18 Am. Dec. 344. [Cited and annotated in 25 L. R. A. 801, on jurisdiction of chancery to decree nullity or dissolution of marriage; in 57 L. R. A. 156, on law governing validity of marriage; in 38 L. R. A. (N. S.) 961, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

§ 349. Damages.

*Annotation.*

Excessive damages in action for alienation of affections or criminal conversation.—42 L. R. A. (N. S.) 582, note.

Mental suffering of husband as an element of damages in criminal conversation.—16 L. R. A. (N. S.) 674, note.

§ 350. Trial.

(a) Where, in an action for criminal conversation, it appeared that the husband's conduct was such that reasonable minds could draw no other conclusion than that he had consented, actively or passively, to his wife's misconduct, the question of such connivance was one of law for the court.—*Kohlhoss v. Mobley*, 102 Md. 199, 62 Atl. 236.

§§ 351-354. (See Analysis.)

### HUSBANDRY.\*

*Cross-Reference.*

See "Agriculture."

### HUSBAND, SHIP'S.

*Cross-Reference.*

See "Shipping," § 22.

### HUSH MONEY.

*Cross-References.*

See "Contracts," § 128; "Threats."

### HYDRANT RENTALS.\*

*Cross-Reference.*

Effect of consolidation of actions for hydrant rentals with suit by city for taxes, see "Action," § 59.

### HYDROPHOBIA.

*Cross-Reference.*

Fear of hydrophobia as element of damage, see "Animals," § 74.

### HYPNOTISM.\*

*Cross-References.*

Of witness, as affecting credibility, see "Witnesses," § 329.

Opinion evidence as to use of, see "Criminal Law," § 480.

### HYPOTHECARY ACTION.\*

*Cross-References.*

See "Chattel Mortgages," §§ 268-292; "Mortgages," §§ 380-590; "Pledges," § 57.

### HYPOTHECATION.\*

*Cross-References.*

See "Chattel Mortgages"; "Maritime Liens"; "Mortgages"; "Pledges."

Of vessels in general, see "Shipping," §§ 30-32.

Bottomry and respondentia, see "Shipping," §§ 88-100.

### HYPOTHETICAL QUESTIONS.\*

*Cross-References.*

In examination of expert witnesses, see "Criminal Law," § 485; "Evidence," §§ 552-554.

Objections first raised on appeal, see "Appeal and Error," § 204.

Review, necessity of specific objections in lower court, see "Appeal and Error," § 231.

Sufficiency of record to present matter for review, see "Appeal and Error," § 690.

To nonexperts, see "Criminal Law," § 456; "Evidence," § 500.

### HYPOTHETICAL STATEMENTS.

*Cross-References.*

By trial court to jury, see "Criminal Law," § 760; "Trial," § 189.

\*Annotation: Words and Phrases, same title.

**HYSTERIA.***Cross-Reference.*

Of witness, as affecting credibility, see "Witnesses," § 332.

**ICE.\****Cross-References.*

Easement to cut ice as incumbrance, see "Covenants," § 42.  
 License taxes on dealers, see "Licenses," § 16.  
 On carrier's premises, see "Carriers," § 286.  
 On highway, liability for injuries, see "Highways," §§ 192, 196.  
 On leased building, see "Landlord and Tenant," § 167.  
 On navigable waters, see "Navigable Waters," § 32.  
 On nonnavigable waters, see "Waters and Water Courses," §§ 292-298.  
 On railroad car, duties of master to servant, see "Master and Servant," § 111.  
 On railroad tracks, duties of master to servant, see "Master and Servant," § 112.  
 On steps of buildings, see "Negligence," § 44.  
 On streets and sidewalks, liability for injuries, see "Municipal Corporations," §§ 676, 677, 770-773.  
 Reasonableness of custom as to staking off ice on public waters, see "Customs and Usages," § 7.

**ICE CREAM.\****Cross-Reference.*

See "Food," §§ 1, 5, 18, 21.

**IDEAS.\****Cross-Reference.*

As property, see "Property," § 2.

**IDEM SONANS.\****Cross-Reference.*

See "Names," § 16.

**IDENTIFICATION.\****Cross-References.*

Of act amended in amending act, see "Statutes," § 138.  
 Of parties to written instrument, parol or extrinsic evidence, see "Evidence," § 459.  
 Of persons or property, evidence to aid construction of will, see "Wills," §§ 489, 490.  
 Of subject-matter of written instrument, parol or extrinsic evidence, see "Evidence," § 460.  
 Of trust property, see "Trusts," § 358.

**IDENTITY.\****Cross-References.*

Deposit of money with bailee, intention as to return of identical money, see "Bailment," § 1.  
 Evidence of other offenses to prove identity, see "Criminal Law," § 369.  
 Hearsay evidence, see "Evidence," § 317.  
 Identification of animals by use of marks and brands, see "Animals," §§ 7-13.  
 Identification of Chinese residing in this country, see "Aliens," § 28.  
 Identification of goods sold, see "Sales," § 70.  
 Identification of horse inflicting injury on plaintiff, see "Animals," § 74.  
 Identification of instrument by certificate of acknowledgment, see "Acknowledgment," § 29.  
 Identification of primary evidence in notice to produce, see "Evidence," § 185.  
 Identification of trust property, see "Trusts," § 358.  
 Issues, proof, and variance as to identity of land in ejectment, see "Ejectment," § 84.  
 Of accused, evidence of in criminal prosecution, see "Arson," § 33; "Burglary," §§ 35, 41; "Homicide," § 170; "Larceny," § 49; "Rape," § 45; "Robbery," § 24.  
 Of accused, proceedings for identification at trial, see "Criminal Law," § 652.  
 Of bill or note sued on, evidence of, see "Bills and Notes," §§ 492, 502, 517.  
 Of causes of action as affecting operation of former judgment as bar, see "Judgment," §§ 582-623.  
 Of causes of action as ground for abatement, see "Abatement and Revival," § 8.  
 Of causes of action in admiralty, see "Admiralty," § 95.  
 Of consignee of goods, see "Carriers," § 82.  
 Of deceased, evidence of in prosecution for homicide, see "Homicide," §§ 154, 229.  
 Of defendant in prosecution for bigamy, see "Bigamy," § 10.  
 Of invention, affecting question of infringement of patent, see "Patents," §§ 226-261.  
 Of invention affecting right to patent, see "Patents," §§ 72, 77.  
 Of invention in original and reissued patent, see "Patents," § 141.  
 Of issues as affecting admissibility of evidence given at former trial or in other proceeding, see "Criminal Law," § 545; "Evidence," § 579.  
 Of issues in actions, see "Abatement and Revival," § 8.  
 Of issues or subject-matter of action as affecting conclusiveness of judgment, see "Judgment," §§ 713-746.  
 Of jurors, see "Jury," § 144.  
 Of names of persons, see "Names," § 14.  
 Of offense under plea of former jeopardy, see "Criminal Law," § 195-202.  
 Of original and reorganized corporation, see "Corporations," § 577.  
 Of parties as affecting admissibility of evidence given at former trial or in other proceeding, see "Evidence," § 580.

\*Annotation: Words and Phrases, same title.



Of parties as affecting pleadings as evidence, see "Evidence," § 208.  
 Of parties, lands and interests in deeds, evidence of, see "Deeds," §§ 199, 207.  
 Of parties to actions, see "Action," § 15.  
 Of parties to actions as ground for abatement, see "Abatement and Revival," § 9.  
 Of parties to written instrument, parol or extrinsic evidence, see "Evidence," § 459.  
 Of person acknowledging instrument, see "Acknowledgment," § 22.  
 Of persons as affecting conclusiveness of former judgment, see "Judgment," §§ 665-682.  
 Of persons as affecting operation of former judgment as bar, see "Judgment," §§ 624-633.  
 Of persons, instructions in trespass to try title, see "Trespass to Try Title," § 45.  
 Of persons, opinion evidence, see "Criminal Law," § 453; "Evidence," §§ 471, 474, 475.  
 Of persons or things, admissibility of evidence, see "Evidence," §§ 102, 339.  
 Of persons or things, demonstrative evidence, see "Evidence," § 189.  
 Of persons or things, evidence to aid construction of will, see "Wills," § 489.  
 Of persons or things, presumptions, see "Evidence," § 55.  
 Of persons or things, sufficiency of evidence, see "Criminal Law," § 566; "Evidence," § 601; "Trespass to Try Title," § 41.  
 Of property in general, extrinsic evidence, see "Evidence," § 393.  
 Of property embezzled, see "Embezzlement," §§ 40, 44.  
 Of property lost or injured by carrier, evidence of, see "Carriers," § 134.  
 Of property mixed with other materials of same kind, see "Confusion of Goods."  
 Of property or other subject-matter, evidence to aid construction of will, see "Wills," § 490.  
 Of property stolen, see "Burglary," §§ 34, 41; "Larceny," § 45.  
 Of property sued for, evidence, see "Ejectment," §§ 86, 89, 94, 95; "Trespass to Try Title," §§ 39, 41.  
 Of property sued for, instructions, see "Trespass to Try Title," § 45.  
 Of relief sought in actions as ground for abatement, see "Abatement and Revival," § 9.  
 Of subject-matter of action as affecting operation of former judgment as bar, see "Judgment," § 586.  
 Of subject-matter of written instrument, parol or extrinsic evidence, see "Evidence," § 460.  
 Photographs as evidence, see "Evidence," § 359.  
 Sufficiency of evidence to show identity of land claimed by adverse possession, see "Adverse Possession," § 114.  
 Sufficiency of notice of attachment to identify person in possession, see "Attachment," § 171.

**IDIOTS.\****Cross-Reference.*

See "Insane Persons."

**IDLE PERSONS.\****Cross-Reference.*

See "Vagrancy."

**IGNORANCE.\****Cross-References.*

Of cause of action as affecting limitation, see "Limitation of Actions," § 95.  
 Of fact as defense to criminal prosecution, see "Criminal Law," § 33.  
 Of fact as ground for equitable relief against judgment, see "Judgment," § 433.  
 Of falsity of representation as affecting validity of assignment, see "Assignments," § 64.  
 Of law as defense to criminal prosecution, see "Criminal Law," §§ 32, 1186.  
 Of residence of debtor as affecting limitation of action, see "Limitation of Actions," § 92.

**ILLEGAL CONTRACTS.\****Cross-Reference.*

See "Contracts," §§ 101-142.

**ILLEGAL FEES.\****Cross-Reference.*

See "Extortion."

**ILLEGAL GAMING.\****Cross-Reference.*

See "Gaming."

**ILLEGALITY.\****Cross-References.*

Contracts, see "Contracts," §§ 102-141.  
 Libel of illegal business, see "Libel and Slander," § 59.

**ILLEGAL IMPRISONMENT.***Cross-Reference.*

See "False Imprisonment."

**ILLEGAL MARRIAGE.***Cross-Reference.*

See "Marriage," §§ 53, 56-67.

**ILLEGAL SALES.***Cross-References.*

See "Fraudulent Conveyances"; "Sales," § 48; "Vendor and Purchaser," § 39.  
 Of intoxicating liquors, see "Intoxicating Liquors."

\*Annotation: Words and Phrases, same title.

**ILLEGAL TRANSACTION.\****Cross-Reference.*

As basis of action, see "Action," § 1.

**ILLEGAL VOYAGE.***Cross-Reference.*

Covenant against in insurance policy, see "Insurance," § 315.

**ILLEGITIMATE CHILDREN.\****Cross-Reference.*

See "Bastards."

**ILL FAME.\****Cross-Reference.*

Houses of ill fame, see "Disorderly House."

**ILLOIT COHABITATION.\****Cross-References.*

See "Adultery"; "Fornication"; "Lewdness."

As motive for homicide, see "Homicide," § 166.

Consideration for contract, see "Contracts," § 112.

Criminal conversation, see "Husband and Wife," §§ 340-354.

Of accused with wife of deceased, as evidence, see "Homicide," § 174.

Undue influence affecting validity of will, see "Wills," §§ 163, 166.

**ILLOIT RELATIONS.***Cross-Reference.*

Affecting validity of wills, see "Wills," § 166.

**ILLNESS.\****Cross-References.*

As explaining negligence in permitting trespassing animals to remain on premises, see "Animals," § 100.

As ground for release on bail, see "Bail," § 44.

Confinement of accused in hospital as releasing bail, see "Bail," § 74.

Effect on testamentary capacity, see "Wills," § 45.

Of accused as defense to proceedings on bail bond, see "Bail," § 84.

Of counsel, ground for continuance, see "Continuance," § 12; "Criminal Law," § 593.

Of counsel, ground for relief for failure to appeal within time, see "Appeal and Error," § 357.

Of juror, ground for new trial, see "Criminal Law," § 923.

Of party or counsel as ground for opening default, see "Judgment," § 143.

Of servant as excuse for nonperformance of services, see "Master and Servant," § 73.

Of witness as ground for continuance, see "Continuance," § 22; "Criminal Law," § 594.

**ILL REPUTE.***Cross-Reference.*

See "Disorderly House."

**ILLUMINATING GAS.***Cross-References.*

See "Gas"; "Mines and Minerals."

**ILLUMINATING OILS.***Cross-References.*

See "Inspection"; "Mines and Minerals."

**ILLUSION.***Cross-Reference.*

See "Insane Persons."

**ILLUSORY APPOINTMENT.\****Cross-Reference.*

See "Powers," § 36.

**IMBECILITY.\****Cross-Reference.*

See "Insane Persons."

**IMITATION.\****Cross-References.*

Infringement of patent, see "Patents," §§ 226-327.

Of articles of food, see "Food," § 7.

Of butter, see "Adulteration"; "Food," § 8.

Of trade-mark or label as criminal offense, see "Trade-Marks and Trade-Names," § 48.

Of trade-mark or trade-name, as infringement, see "Trade-Marks and Trade-Names," §§ 57-60.

Of trade-mark or trade-name as unfair competition, see "Trade-Marks and Trade-Names," § 70.

**IMMATERIAL AVERMENTS.\****Cross-Reference.*

In pleading, see "Pleading," §§ 35, 364.

**IMMATERIAL ISSUE.\****Cross-Reference.*

In pleading, see "Pleading," § 371.

**IMMEMORIAL USAGE.\****Cross-Reference.*

See "Customs and Usages."

\*Annotation: Words and Phrases, same title.

**IMMIGRATION.\****Cross-References.*

- See "Aliens," §§ 39-59.  
 License tax of immigration agents as interference with foreign commerce, see "Commerce," § 63.  
 Mandamus to compel payment of salary of commissioner, see "Mandamus," § 3.  
 Quarantine and other health regulations as interference with foreign commerce, see "Commerce," § 52.

**IMMORALITY.\****Cross-References.*

- See "Adultery"; "Bastards"; "Disorderly House"; "Fornication"; "Lewdness"; "Seduction."  
 Contract based on immoral consideration, see "Contracts," § 112.  
 Ground for discharge of servant, see "Master and Servant," §§ 21, 30.  
 Immoral transaction as cause of action, see "Action," § 4.  
 Libelous and slanderous imputations, see "Libel and Slander," § 7.  
 Of plaintiff as defense to cause of action, see "Action," § 12.

**IMMOVABLES.\****Cross-References.*

- See "Abandonment," § 6; "Property."  
 Conveyances, see "Deeds."  
 Descent, see "Descent and Distribution," § 4.  
 Devises, see "Wills."  
 Fixtures, see "Fixtures."  
 Lease, see "Landlord and Tenant."  
 Mortgage, see "Mortgages."  
 Quieting title, see "Quieting Title."  
 Recovery, see "Ejectment"; "Entry, Writ of"; "Real Actions"; "Trespass to Try Title."  
 Sales, see "Vendor and Purchaser."

**IMMUNITY.\****Cross-References.*

- From arrest, see "Arrest," §§ 9, 43, 60.  
 From prosecution of person testifying for state, see "Criminal Law," § 42.  
 Of citizens, see "Civil Rights"; "Constitutional Law," §§ 204-207.  
 Of consuls, see "Ambassadors and Consuls," § 3.  
 Of extradited person from other prosecution or action, see "Extradition," §§ 19, 20, 41, 42.  
 Of property from process, see "Exemptions"; "Homestead."  
 Of state agricultural society from suits for wrongful conduct, see "Agriculture," § 4.

**IMPAIRING OBLIGATION OF CONTRACT.\****Cross-Reference.*

- See "Constitutional Law," §§ 113-119.

\*Annotation: Words and Phrases, same title.

**IMPANELING JURY.\****Cross-References.*

- See "Grand Jury," § 20; "Jury," §§ 143-150.

**IMPEACHMENT.\****Cross-References.*

- Absence of impeaching evidence as ground for continuance, see "Continuance," § 24; "Criminal Law," § 596.  
 Of accord and satisfaction, see "Accord and Satisfaction," § 22.  
 Of account stated, see "Account Stated," §§ 8, 11, 12.  
 Of auditor's report in action for accounting, see "Account," § 20.  
 Of award of arbitrators, see "Arbitration and Award," §§ 63, 76-78, 82, 88, 89.  
 Of certificate of acknowledgment, see "Acknowledgment," §§ 55, 56, 62.  
 Of compromise and settlement, see "Compromise and Settlement," § 19.  
 Of court records in general, see "Courts," § 117.  
 Of dying declarations, see "Homicide," § 219.  
 Of election returns or certificates, see "Elections," § 294.  
 Of judgment by direct proceedings, see "Judgment," §§ 135-177, 294-469.  
 Of judgment in collateral proceeding, see "Judgment," §§ 470-523.  
 Of measurement or scale of logs or timber, see "Logs and Logging," § 10.  
 Of officers, see "Officers," § 73.  
 Of record on appeal, see "Appeal and Error," §§ 667-670; "Criminal Law," § 1112.  
 Of release of decree in admiralty, see "Admiralty," § 95.  
 Of return of service of process, see "Process," § 143.  
 Of testimony admitted to prevent continuance, see "Criminal Law," § 600.  
 Of verdict by affidavits of jurors in general, see "Trial," § 344.  
 Of verdict by testimony or affidavit of jurors on motion for new trial, see "Criminal Law," § 957; "New Trial," § 143.  
 Of verdict, newly discovered impeaching evidence as ground for new trial, see "Criminal Law," § 942; "New Trial," § 105.  
 Of witness, see "Witnesses," §§ 311-416.  
 Of witness, discrediting expert by cross-examination, see "Evidence," § 558.  
 Of witness, objections first made on appeal, see "Appeal and Error," § 203.  
 Of witness, review of discretion of lower court, see "Appeal and Error," § 971.  
 Sufficiency of affidavit of defense impeaching acknowledgment, see "Acknowledgment," § 58.

**IMPEDING JUSTICE.\****Cross-Reference.*

- See "Obstructing Justice."

**IMPEDING NAVIGATION.***Cross-Reference.*

See "Navigable Waters," §§ 19-27.

**IMPERATIVE STATUTES.\****Cross-Reference.*

See "Statutes," § 227.

**IMPERTINENCE.\****Cross-References.*

In pleading, see "Equity," §§ 151, 191;  
"Pleading," § 23.  
Of evidence, see "Criminal Law," §§ 337-361; "Evidence," §§ 99-117.

**IMPLEMENTS.\****Cross-References.*

Exemptions, see "Bankruptcy," § 396;  
"Exemptions," § 45.

**IMPLICATION.\****Cross-References.*

Creation of easement, see "Easements," §§ 15-19.  
Fee simple estates devised by implication, see "Wills," § 599.  
Life estates devised by implication, see "Wills," § 615.  
Repeal of statute, see "Statutes," §§ 158-167.

**IMPLIED AUTHORITY.\****Cross-Reference.*

Of agent, see "Principal and Agent," §§ 98-112.

**IMPLIED CONSIDERATION.***Cross-Reference.*

Contracts under seal, see "Contracts," § 48.

**IMPLIED CONTRACTS.\****Cross-References.*

See "Account Stated"; "Assumpsit, Action of"; "Contracts," §§ 4, 27; "Contribution"; "Covenants," §§ 8-20; "Guaranty," § 3; "Indemnity," § 13; "Money Lent"; "Money Paid"; "Money Received"; "Principal and Surety," §§ 12-15; "Use and Occupation"; "Work and Labor."  
Acceptance of bill of exchange, see "Bills and Notes," §§ 68, 70.  
Agency, see "Principal and Agent," § 14.  
Between husband and wife, see "Husband and Wife," § 40.  
Care of horses and vehicles, see "Livery Stable Keepers," § 6.  
Contracts implied by law on part performance of contracts within statute of frauds, see "Frauds, Statute of," § 138.

Employment, see "Master and Servant," §§ 4, 9.

For improvements as basis for mechanic's lien, see "Mechanics' Liens," § 75.

For payment of interest, see "Interest."

Liens, see "Liens," § 4.

Limitation of actions for breach, see "Limitation of Actions," §§ 28, 49.

Of corporations, see "Corporations," § 451.

Of counties, see "Counties," § 125.

Of municipal corporations, see "Municipal Corporations," § 249.

Of United States, see "United States," § 69.

Right to attachment in action on, see "Attachment," § 6.

Sale, see "Sales," § 33.

Tenancy, see "Landlord and Tenant," §§ 7-14.

To pay rent, see "Landlord and Tenant," § 183.

**IMPLIED COVENANTS.\****Cross-References.*

In general, see "Covenants," §§ 8-20.

For quiet enjoyment of leased premises, see "Landlord and Tenant," § 130.

**IMPLIED DISPOSITIONS.***Cross-Reference.*

By will, see "Wills," § 478.

**IMPLIED GRANTS.***Cross-Reference.*

Of railroad right of way, see "Railroads," § 66.

**IMPLIED INVITATION.\****Cross-Reference.*

See "Negligence," § 32.

**IMPLIED LICENSES.\****Cross-Reference.*

In respect to real property, see "Licenses," § 46.

**IMPLIED MALICE.\****Cross-References.*

See "Criminal Law," § 24; "Homicide," §§ 13, 87; "Libel and Slander," § 5; "Malicious Mischief," § 1; "Malicious Prosecution," §§ 29-33.

**IMPLIED REPEAL.\****Cross-Reference.*

See "Statutes," §§ 158-167.

**IMPLIED TRUSTS.\****Cross-Reference.*

See "Trusts," §§ 62-111.

\*Annotation: Words and Phrases, same title.

**IMPLIED WARRANTY.\****Cross-References.*

- Of seaworthiness of vessel, see "Shipping," §§ 42, 121.  
 On indorsement of bill or note for transfer, see "Bills and Notes," § 296.  
 On sale of land, see "Vendor and Purchaser," § 128.  
 On sale of personal property, see "Sales," §§ 263-274.

**IMPORTERS.\****Cross-Reference.*

- Negligence of attorneys of importer in matter of protest against customs duties, see "Attorney and Client," § 112.

**IMPORTS.\****Cross-References.*

- Authority of special assistant to attorney general appointed to investigate fraudulent importations, see "Attorney General," § 7.  
 Combinations to control, see "Monopolies," § 15.  
 Duties, see "Customs Duties."  
 Imposition of duties as regulation of commerce, see "Commerce," §§ 75-78.  
 Of diseased live stock, see "Animals," § 30.  
 Of patented articles as infringement, see "Patents," § 258.

**IMPORTUNITY.***Cross-References.*

- In procuring execution of deed, see "Deeds," § 72.  
 In procuring execution of will, see "Wills," § 155.  
 In procuring gift, see "Gifts," § 38.

**IMPOSITION.\****Cross-References.*

- Of taxes, see "Customs Duties"; "Internal Revenue"; "Taxation."

**IMPOSSIBLE CONSIDERATION.\****Cross-Reference.*

- See "Contracts," § 80.

**IMPOSTOR.***Cross-Reference.*

- See "False Personation."

**IMPOSTS.\****Cross-References.*

- See "Customs Duties."  
 As regulation of commerce, see "Commerce," §§ 76-78.

**IMPOTENCY.\****Cross-References.*

- Defense to prosecution for rape, see "Rape," § 17.  
 Ground for annulment of marriage, see "Marriage," § 6.  
 Ground for divorce, see "Divorce," §§ 16, 20.

**IMPOUNDING.\****Cross-Reference.*

- Animals, see "Animals," §§ 51, 95, 103-110.

**IMPRESSION.\****Cross-Reference.*

- Of witness, see "Witnesses," § 250.

**IMPRISONMENT.\****Cross-References.*

- See "Arrest"; "Bail"; "Convicts"; "Criminal Law," §§ 1205-1218; "Escape"; "Execution," §§ 421-453; "False Imprisonment"; "Habeas Corpus"; "Kidnapping"; "Pardons"; "Prisons"; "Reformatories"; "Rescue."  
 Constitutional guaranty of personal liberty, see "Constitutional Law," § 83.  
 For contempt of court, see "Contempt," §§ 70-82.  
 For crime as affecting limitation of actions, see "Limitation of Actions," § 75.  
 For debt as affecting power of bankruptcy court to compel surrender of property by bankrupt to trustee, see "Bankruptcy," § 136.  
 For nonpayment of alimony, see "Divorce," § 268.  
 For nonpayment of costs in criminal prosecution, see "Costs," § 322.  
 For nonpayment of fine, see "Fines," §§ 11-13.  
 Identity of issues in actions for false imprisonment and for malicious prosecution, see "Abatement and Revival," § 8.  
 On admiralty process, see "Admiralty," § 46.  
 Release of bankrupt from, see "Bankruptcy," § 393.  
 To enforce order for support in bastardy proceedings, see "Bastards," § 83.  
 Validity of note to procure release from imprisonment, see "Bills and Notes," § 106.

**IMPRISONMENT AT HARD LABOR.\****Cross-Reference.*

- What constitutes within statutes relating to bail, see "Bail," § 44.

**IMPROVEMENT CERTIFICATES.\****Cross-Reference.*

- See "Municipal Corporations," § 485.

\*Annotation: Words and Phrases, same title.

## IMPROVEMENTS. \*

*Scope-Note.*

[INCLUDES rights and liabilities arising from the making of improvements on real property by others than the owners of the soil.

[EXCLUDES allowances and other remedies in respect of such improvements, under occupying claimants acts or otherwise, in particular classes of actions (see "*Ejectment*"; "*Trespass to Try Title*"; "*Partition*"; and other specific heads).

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

- § 1. Nature and effect of making in general.
- § 2. Statutory provisions.
- § 3. Ownership.
- § 4. Compensation.

*Cross-References.*

- |  |   |
|--|---|
| <p>See "Fences," § 4.</p> <p>Abandonment of contract of sale by purchaser after making improvements, see "Vendor and Purchaser," § 87.</p> <p>Acquisition of fee title by purchaser at tax sale, see "Taxation," § 732.</p> <p>Affecting establishment of boundaries, see "Boundaries," § 47.</p> <p>As infringement of copyrighted book, see "Copyrights," § 63.</p> <p>As infringement of patent, see "Patents," §§ 240, 248.</p> <p>As part of homestead, see "Homestead," § 78.</p> <p>As part performance of oral contracts entitling to specific performance, see "Specific Performance," § 47.</p> <p>As property subject to lien for taxes, see "Taxation," § 507.</p> <p>As property which may be reached by creditors, see "Creditors' Suit," § 8.</p> <p>Assessment of value by jury on ouster of occupying claimant, see "Jury," § 16.</p> <p>By co-tenant, see "Tenancy in Common," § 29.</p> <p>By donee under oral gift, see "Gifts," § 25.</p> <p>By executor or administrator, see "Executors and Administrators," § 132.</p> <p>By heir on property sold to pay ancestor's debts, see "Executors and Administrators," § 386.</p> <p>By holder of determinable fee, see "Estates," § 6.</p> <p>By person in possession under contract void under statute of frauds, see "Frauds, Statute of," § 142.</p> <p>By person in possession under contract to devise, see "Executors and Administrators," § 211.</p> <p>By purchaser from husband and wife under insufficient deed, see "Husband and Wife," § 15.</p> <p>By purchaser of homestead, see "Homestead," § 128.</p> | <p>By purchaser of wife's separate property under void deed, see "Husband and Wife," § 202.</p> <p>By remainderman, see "Remainders," § 15.</p> <p>By subsequent purchasers, see "Vendor and Purchaser," § 212.</p> <p>By widow in possession pending assignment of dower, see "Dower," § 56.</p> <p>Compensation for improvements by purchaser of invalid tax title, see "Taxation," § 834.</p> <p>Compensation for improvements in action of right, see "Real Actions," § 5.</p> <p>Compensation for improvements in action to confirm or try tax title, see "Taxation," § 815.</p> <p>Compensation for improvements in action to quiet title, see "Quieting Title," §§ 50, 51.</p> <p>Compensation for improvements in ejectment, see "Ejectment," §§ 139-152.</p> <p>Compensation for improvements in partition, see "Partition," § 85.</p> <p>Compensation for improvements in petitory action, see "Real Actions," § 8.</p> <p>Compensation for improvements in trespass to try title, see "Trespass to Try Title," §§ 56-59.</p> <p>Compensation for improvements on appropriation of land for public use, see "Eminent Domain," § 133.</p> <p>Compensation for improvements on opening or vacating foreclosure sale, see "Mortgages," § 540.</p> <p>Compensation for improvements on public lands by bona fide settlers or claimants, see "Public Lands," § 134.</p> <p>Compensation for improvements on redemption from sale for nonpayment of levee taxes, see "Levees," § 28.</p> <p>Compensation for improvements on redemption of mortgaged property, see "Mortgages," § 603.</p> <p>Compensation for improvements on rescission of contract of sale, see "Vendor and Purchaser," §§ 105, 127.</p> |
|--|---|

\*Annotation: Words and Phrases, same title.

Compensation for improvements on writ of entry, see "Entry, Writ of," § 25.  
 Contracts relating to, see "Contracts," § 195.  
 Dedication of private improvements to public use, see "Dedication," §§ 16, 20.  
 Distinction between real and personal property, see "Property," § 4.  
 Effect of reversal of judgment in condemnation proceedings on right to improvements made pending proceedings, see "Eminent Domain," § 263.  
 Element of adverse possession, see "Adverse Possession," § 20.  
 Enforcement of lien for improvements against homestead, see "Homestead," § 97.  
 Evidence as to damages, see "Damages," § 174.  
 Extension of mortgage to improvements erected on land, see "Mortgages," § 132.  
 Grants of lands to states for internal improvements, see "Public Lands," §§ 62-66.  
 Laws providing for compensation for improvements as impairing obligation of contracts, see "Constitutional Law," § 160.  
 Liability of husband for improvements placed on land of wife under contract to convey, see "Husband and Wife," § 15.  
 Liability of improvements on public lands to taxation, see "Taxation," § 180.  
 Liability to taxation in general, see "Taxation," § 65.  
 Lien for compensation on proceeds of sale on partition, see "Partition," § 111.  
 Lien of purchaser for value of improvements on breach of contract of sale by vendor, see "Vendor and Purchaser," § 337.  
 Liens, see "Mechanics' Liens."  
 Of harbors, see "Navigable Waters," § 14.  
 Of highways, see "Highways," §§ 98-120.  
 Of lands under water, see "Navigable Waters," § 38.  
 Of leased mining property, see "Mines and Minerals," § 80.  
 Of leased premises, see "Landlord and Tenant," §§ 157-159.  
 Of levees, see "Levees," § 17.  
 Of mines, as affecting validity of location, see "Mines and Minerals," § 23.  
 Of mortgaged premises, rights and liabilities of parties, see "Mortgages," § 203.  
 Of navigable waters, see "Navigable Waters," §§ 6-13.  
 Of property in hands of receivers, see "Receivers," § 93.  
 Of trust property, see "Trusts," § 184.  
 On Indian lands, see "Indians," §§ 15, 16, 22.  
 On lands of bankrupt as exempt property, see "Bankruptcy," § 396.  
 On land sold by executor, see "Executors and Administrators," § 152.  
 On married woman's separate property, see "Husband and Wife," §§ 141, 150.  
 On public lands, see "Public Lands," § 20.  
 On school lands, see "Public Lands," § 56.  
 Parol or extrinsic evidence to contradict or vary lease, see "Evidence," § 393.  
 Patents for improvements, see "Patents," §§ 9, 12.  
 Patents for improvements, limitation of claims, see "Patents," § 174.

Permitting improvements as ground of estoppel in pais, see "Estoppel," § 93.  
 Public improvements, see "Canals," §§ 5, 6; "Cemeteries," § 4; "Counties," § 22; "District of Columbia," §§ 13-17; "Drains"; "Electricity," § 1½; "Ferries," § 5; "Gas," § 3; "Highways"; "Levees"; "Municipal Corporations," §§ 70, 265-588; "States," § 86; "Street Railroads," § 13; "Turnpikes and Toll Roads," §§ 4, 25; "Waters and Water Courses," §§ 183, 222; "Wharves," § 5.  
 Relief to heir placing improvements on land afterwards sold for payment of debts, see "Executors and Administrators," § 386.  
 Remedy of creditor of debtor placing improvements on lands of another, see "Fraudulent Conveyances," § 233.  
 Report of viewers as to improvements along proposed highway, see "Highways," § 41.  
 Right and liabilities of life tenant as to improvements, see "Life Estates," § 17.  
 Right of fraudulent grantee to reimbursement for improvements, see "Fraudulent Conveyances," § 183.  
 Right of purchaser at guardian's sale on avoidance by wards, see "Guardian and Ward," § 108.  
 Right of purchaser at sale by assignee for benefit of creditors, see "Assignments for Benefit of Creditors," § 250.  
 Rights and liabilities as between vendor and purchaser of land, see "Vendor and Purchaser," § 201.  
 Rights of person in possession of land under contract to devise, see "Wills," § 67.  
 Rights of purchaser pendente lite, see "Lis Pendens," § 26.  
 Rights of purchaser at invalid foreclosure sale, see "Mortgages," § 532.  
 Rights of purchaser from distributees of intestate, see "Descent and Distribution," § 87.  
 Rights of purchaser on avoidance of administration sale, see "Executors and Administrators," § 389.  
 Sale of improvements as within statute of frauds, see "Frauds, Statute of," § 72.  
 Setting up claim for improvements in action to recover homestead see "Homestead," § 209½.  
 Statute relating to improvements by defendant in possession as affecting vested rights, see "Constitutional Law," § 93.  
 Title of trustee in bankruptcy to improvements on land sold to bankrupt, see "Bankruptcy," § 139.  
 Under parol contract as within statute of frauds, see "Frauds, Statute of," § 129.  
 Validity as against creditors of expenditures by husband on wife's realty, see "Fraudulent Conveyances," § 106.  
 Validity of retrospective laws providing for set-off of value of permanent improvements, see "Constitutional Law," § 190.  
 Value as element of damages in action for breach of contract of sale of land, see "Vendor and Purchaser," § 351.  
 Value as measure of damages for breach of covenant, see "Covenants," §§ 125, 130.

### § 1. Nature and effect of making in general.

(a) Ditching and grubbing meadow land may be necessary, lasting, and valuable improvements, and, if so upon the proof, must be allowed for accordingly.—*Jones v. Jones*, 4 Gill 87. [Cited and annotated in 69 L. R. A. 45, on relief of purchaser on annulment of judicial sale; in 20 L. R. A. (N. S.) 379, on plowing and cultivating land as "improvements."]

### § 2. Statutory provisions.

(a) Under act 1745, c. 9, § 10, regulating riparian rights in Baltimore, where A. enters upon the lot of B., fronting on the Patapsco river, and constructs a dock and makes other improvements by filling in the land between the dock and the port warden's line, without the consent of B., such improvements belong to B., the riparian owner, in front of whose lot they are made.—*City of Baltimore v. St. Agnes Hospital*, 48 Md. 419. (See Balto. City, Rev. Charter, § 6, subs. 8.) [Cited and annotated in 40 L. R. A. 647, on right to erect wharves.]

### § 3. Ownership.

### § 4. Compensation.

#### Annotation.

Right of one holding under invalid tax deed to be reimbursed for improvements.—34 L. R. A. (N. S.) 549, note.

Rights in respect to compensation for improvements on land, made in good faith, under an oral contract or gift.—53 L. R. A. 337, note.

Husband's right to compensation for improvements on land held by entireties.—30 L. R. A. 309, note.

(a) To entitle one to recover even in equity, for improvements made upon another's property, he must have held possession of the land under color of title adverse to the true owner's title, and must have acted in good faith, i. e., in honest belief, founded upon reasonable grounds, that he had secured good title to the property and was the owner; and hence, where a wife improved land in which her husband had inherited an interest to serve herself, supposing it would be a home for herself and children, knowing the land did not belong to her, or having no reasonable grounds for believing that it did, she could not recover the money expended.—*Bryan v. Councilman*, 106 Md. 380, 67 Atl. 279.

(b) Where a son enters into possession of land belonging to his father, with his father's consent, and in anticipation of a devise from him, and is afterwards ousted by the father, he is entitled to compensation for labor and money expended in permanent improvements.—*Duckett v. Duckett*, 73 Md. xiv, memorandum case, 21 Atl. 323, full report. (See *Same v. Same*, 71 Md. 357, 18 Atl. 535.)

(c) Where an occupant of lands in good faith, supposing his title to be a legal one, makes improvements, he is entitled to compensation.—*Strike's Case*, 1 Bland 57; *Long v. Long*, 62 Md. 33.

(d) It is only the bona fide occupant of another's land who, when dispossessed, is entitled to compensation for his improvements.—*Linthicum v. Thomas*, 59 Md. 574.

(e) A claim for permanent improvements cannot be maintained by a mere tortfeasor or intruder, who holds with full knowledge of his own position and of the adverse claims of others.—*Linthicum v. Thomas*, 59 Md. 574.

(f) An auditor, in ascertaining the enhanced value of certain buildings and grounds by reason of improvements placed thereon by the tenant, in taking the average of all the opinions expressed by witnesses examined on the subject, should not include the opinion of any witness whose testimony, if it stood alone, could not be relied on by the court as the foundation for its decision of the question.—*Barnum v. Barnum*, 42 Md. 251. [Cited and annotated in 32 L. R. A. 744, on life tenant's duty to pay taxes.]

(g) When an auditor is required to ascertain the enhanced vendible value of certain buildings and grounds at the time of sale, by reason of the meliorations and improvements placed thereon by the occupier or tenant, he may, as the most reliable and safe method of approximating the truth in such case, with the least risk of falling into gross error, take the average of all the opinions expressed by the witnesses examined on the subject.—*Barnum v. Barnum*, 42 Md. 251. [Cited and annotated, see supra.]

(h) A mortgagee, or a tenant in posses-



sion, may not in all cases be allowed for new improvements; but a party who has expended a considerable amount in repairing and making lasting improvements, thinking himself absolutely entitled, will be allowed for such expenditures.—*Gambril v. Gambril*, 3 Md. Ch. 259. [Cited and annotated in 13 L. R. A. (N. S.) 516, on right of life tenant, or one claiming under him, to recover for improvements.]

(i) When a defendant purchased in ignorance of any defect of title, though apprised of the claim of the complainant for a lien on the premises purchased, and took possession and made improvements under the opinion of counsel that the title was clear, and all his acts and circumstances of the case demonstrate that at the time of his purchase, and when the improvements were made, he believed his title to be a good one, he is entitled to compensation as a bona fide possessor for the amount of his melioration and improvements of the estate, beneficial to the true owner.—*Jones v. Jones*, 4 Gill 87. [Cited and annotated in 59 L. R. A. 45, on relief of purchaser on annulment of judicial sale; in 20 L. R. A. (N. S.) 379, on plowing and cultivating land as "improvements."]

(j) Where the enhanced annual value of an estate was in a great measure the result of expenditures made in the melioration of the soil, substantial justice is done by considering the enhancement of the rents as a fair offset to the expenditure for melioration.—*Jones v. Jones*, 4 Gill 87. [Cited and annotated, see supra.]

(k) In ascertaining the value of lasting improvements, if the property only is recovered, then the estimate is to be made at the time of the audit, and so if the rents and profits are charged independently of improvements; but, if they are charged agreeably to the improved value, then the estimate is to be made at the original cost.—*Jones v. Jones*, 4 Gill 87. [Cited and annotated, see supra.]

(l) Improvements will be estimated at the time of the audit, in the absence of proof of their original cost, the time when they were made, and their depreciation since, if any.—*Jones v. Jones*, 4 Gill 87. [Cited and annotated, see supra.]

(m) Where a complainant, seeking to re-

cover land or to subject it for satisfaction of a lien, has no absolute right to relief, but only in the discretion of the court, the defendant in possession will be allowed for such improvements, made bona fide, without a knowledge of the defect of his title, as have permanently enhanced the value of the lands.—*Jones v. Jones*, 4 Gill 87. [Cited and annotated, see supra.]

(n) An infant feme covert joined her husband in conveying lands to B., who with covenants of warranty conveyed to C., who made improvements thereon. The woman subsequently recovered the lands from C. in ejectment by reason of her infancy and then conveyed to a second grantee. C. recovered damages on his covenant, and on a bill by B. the second grantee was enjoined from paying to the woman the entire purchase money, but was required to retain an amount equal in value to C.'s improvements. *Held*, that she should be compelled to pay the amount of C.'s improvements to him, on which payment of the injunction would be dissolved.—*Quynn v. Staines*, 3 H. & McH. 128.

### IMPROVIDENCE.\*

#### Cross-References.

See "Spendthrifts."

Spendthrift trusts, see "Trusts"; "Wills," § 674.

### IMPUTED NEGLIGENCE.\*

#### Cross-Reference.

See "Negligence," §§ 89-96.

### INADEQUATE DAMAGES.\*

#### Cross-References.

See "Damages," §§ 127-140.

Ground for new trial, see "New Trial," § 75.

### INADEQUATE PRICE.\*

#### Cross-References.

Ground for setting aside execution sale, see "Execution," §§ 250, 251.

Ground for setting aside judicial sale in general, see "Judicial Sales," §§ 39, 40, 45.

Ground for setting aside sale of decedent's property under order of court, see "Executors and Administrators," §§ 379, 380.

Ground for setting aside sale of infant's property under order of court, see "Infants," § 40.

\*Annotation: Words and Phrases, same title.

Ground for setting aside sale of ward's property under order of court, see "Guardian and Ward," § 105.

### INADVERTENCE.\*

#### *Cross-References.*

See "Negligence," § 9.  
Contributory negligence in general, see "Negligence," § 69.  
Contributory negligence of servant, see "Master and Servant," § 236.  
Ground for new trial, see "Criminal Law," § 936; "New Trial," §§ 82-98.  
Ground for opening default judgment, see "Judgment," § 143.

### IN CAMERA.

#### *Cross-References.*

Right to public trial, see "Criminal Law," § 635; "Divorce," § 146; "Equity," § 384; "Trial," § 20.

### INCAPACITY.\*

#### *Cross-References.*

To commit crime, see "Criminal Law," §§ 46-58; "Husband and Wife," §§ 107, 108; "Infants," §§ 65-69; "Insane Persons," §§ 83-86; "Rape," § 3.  
To contract, see "Contracts," § 92; also, "Aliens," §§ 5-14; "Bills and Notes," § 101; "Bonds," §§ 37-41; "Chattel Mortgages," § 70; "Deeds," § 68; "Drunkards," § 6; "Husband and Wife," §§ 55-108; "Infants," §§ 46-58; "Insane Persons," §§ 72-79; "Landlord and Tenant," § 27; "Marriage," §§ 4-11; "Mortgages," § 76; "Sales," § 35; "Spendthrifts," § 8; "Vendor and Purchaser," § 30.

### INCENDIARISM.\*

#### *Cross-Reference.*

See "Arson."

## INCEST. \*

### *Scope-Note.*

[INCLUDES sexual intercourse between persons related to each other within such degrees that marriage between them is prohibited by law; nature and extent of criminal responsibility therefor, and grounds of defense; and prosecution and punishment of such acts as public offenses.

[EXCLUDES capacity to marry (see "Marriage") and marriage between persons within prohibited degrees or between prohibited races (see "Miscegenation").

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature and offense in general.
- § 2. Statutory provisions.
- § 3. Elements of offenses.
- § 4. — In general.
- § 5. — Relationship, and knowledge thereof.
- § 6. — Criminal intercourse.
- § 7. — Consent of parties and use of force.
- § 8. Defenses.
- § 8½. Persons liable.
- § 9. Indictment or information.
- § 10. — Requisites and sufficiency.
- § 11. — Issues, proof, and variance.
- § 12. Evidence.
- § 13. — Admissibility.
- § 14. — Weight and sufficiency in general.
- § 15. — Corroboration of testimony of female.
- § 16. Trial.

\*Annotation: Words and Phrases, same title.

*Cross-References.*

See "Rape," § 2.  
 Adoption or enactment of Code, see "Statutes," § 145.  
 Application for new trial in general, see "Criminal Law," § 958.  
 Competency of wife as witness, see "Witnesses," § 61.  
 Consanguinity or affinity as affecting capacity to marry, see "Marriage," § 10.  
 Denial of due process of law, see "Constitutional Law," § 258.  
 Former jeopardy, see "Criminal Law," § 200.  
 Ground for new trial in general, see "Criminal Law," § 939.  
 Harmless error, see "Criminal Law," §§ 1166½, 1169, 1171-1173.  
 Identification of act amended, see "Statutes," § 138.  
 Implied repeal of statute relating to incest by re-enactment provisions, see "Statutes," § 166.  
 Statute relating to, as denial of due process of law, see "Constitutional Law," § 258.  
 Subject and title of act relating to incest, see "Statutes," § 118.  
 What law governs as to marriage between persons within prohibited degrees of consanguinity, see "Marriage," § 3.

*Evidence.*

Accomplices within rules of evidence, see "Criminal Law," § 507.  
 Admissions, see "Criminal Law," § 406.  
 Confessions, see "Criminal Law," §§ 517, 528.  
 Declarations, see "Criminal Law," §§ 406, 410, 415, 417.  
 Evidence of good character of accused, see "Criminal Law," § 12.

Materiality of evidence, see "Criminal Law," § 384.  
 Opinion evidence, see "Criminal Law," §§ 451, 473.  
 Other offenses, see "Criminal Law," §§ 369, 372.  
 Res gestæ, see "Criminal Law," § 366.  
 Testimony of accomplices and codefendants, see "Criminal Law," §§ 507, 508.

*Indictment or information.*

Conviction of offense included in charge, see "Indictment and Information," §§ 185, 190.  
 Joinder of counts, see "Indictment and Information," § 129.

*Trial.*

Argument of counsel, see "Criminal Law," §§ 720, 721½, 724.  
 Assumption as to facts in instructions, see "Criminal Law," § 761.  
 Election between acts, see "Criminal Law," § 678.  
 Exclusion of witnesses, see "Criminal Law," § 655.  
 Grounds for continuance, see "Criminal Law," § 595.  
 Instructions, applicability to evidence, see "Criminal Law," § 814.  
 Instructions as to testimony of accomplices, see "Criminal Law," § 780.  
 Instructions, harmless error in, see "Criminal Law," §§ 1172, 1173.  
 Instructions, requests for, see "Criminal Law," § 824.  
 Presumptions from failure to call witness, see "Criminal Law," § 137.  
 Questions for jury in general, see "Criminal Law," § 742.

*Annotation.*

Conflict of laws as to incestuous marriage.—57 L. R. A. 166, note.  
 May girl below the age of consent be guilty of incest.—27 L. R. A. (N. S.) 872, note.  
 Incest between persons related by marriage.—31 L. R. A. (N. S.) 772, note.  
 Slander in charging person with incest.—24 L. R. A. (N. S.) 612, note.  
 Proof of corpus delicti in prosecution for incest.—68 L. R. A. 45, note.  
 Evidence of other crimes in prosecution for incest.—62 L. R. A. 329, note.

Admissibility of evidence of prior or subsequent acts of intercourse between the parties in a prosecution for incest.—26 L. R. A. (N. S.) 466, note.

Evidence of specific instances to prove character for chastity in prosecution for incest.—14 L. R. A. (N. S.) 725, note.

Husband or wife as witness against the other in prosecution for incest.—2 L. R. A. (N. S.) 862, note.

**INCHOATE DOWER.\****Cross-Reference.*

See "Dower," §§ 44-53.

**INCHOATE RIGHTS.\****Cross-References.*

See "Dower," §§ 29-53.

Sale of inchoate right in invention as consideration for note, see "Bills and Notes," § 92.

**INCITEMENT.\****Cross-References.*

To crime, see "Criminal Law," §§ 45, 59-82; "Homicide," §§ 38-51, 95.

**INCLOSURE.\****Cross-References.*

See "Fences."

Dog in owner's cart in street as outside of owner's inclosure, see "Animals," § 68.

Element of adverse possession, see "Adverse Possession," § 19.

Of railroads, see "Railroads," §§ 103, 104.

**INCOME.\****Cross-References.*

See "Annuities."

\*Annotation: Words and Phrases, same title.

Allowance of attorney's fee from income belonging to life tenant, see "Attorney and Client," § 155.  
 Commissions to executor or administrator on income estate, see "Executors and Administrators," § 495.  
 Disposition by will, see "Wills," §§ 564, 573, 618.  
 Of decedent's estate, availability for payment of debts, see "Executors and Administrators," § 271.  
 Of husband's or wife's property, as community or separate property, see "Husband and Wife," § 257.  
 Of married woman's separate estate, see "Husband and Wife," §§ 125, 144.  
 Of railroad companies, application to debts, see "Railroads," § 173.  
 Of trust, see "Trusts," §§ 126, 148, 272-274; "Wills," § 684.  
 Preference or abatement of income bequeathed, see "Wills," § 810.  
 Rights and liabilities of life tenants as to income of property, see "Life Estates," § 15.  
 Rights of devisees and legatees in general, see "Wills," § 728.  
 Rights of heirs and distributees, see "Descent and Distribution," § 79.  
 Right to income on failure of devise or bequest, see "Wills," § 854.  
 Taxation of earnings or receipts of corporation, see "Taxation," §§ 121, 148, 153, 168, 368, 393.  
 Tax on property and on income therefrom as double taxation, see "Taxation," § 47.

### INCOME TAX.\*

#### Cross-References.

See "Internal Revenue," § 7; "Taxation," §§ 54, 104.

### INCOMPATIBILITY.\*

#### Cross-References.

Of offices, affecting right of one person to hold both, see "Officers," § 30.  
 Of temper, ground for divorce, see "Divorce," § 34.

### INCOMPETENCY.\*

#### Cross-References.

Ground for discharge of servant, see "Master and Servant," § 30.  
 Mental incompetency of client as terminating relation of attorney and client, see "Attorney and Client," § 76.  
 Of administrator, see "Executors and Administrators," § 18.  
 Of arbitrators, see "Arbitration and Award," § 27.  
 Of assignee, see "Assignments for Benefit of Creditors," § 201.  
 Of commissioners or viewers in highway proceedings, see "Highways," § 37.  
 Of evidence, see "Criminal Law," §§ 382-397; "Evidence," §§ 148-156.  
 Of evidence of absent witness affecting right to continuance, see "Continuance," §§ 23-26; "Criminal Law," § 595.

Of executor, see "Executors and Administrators," § 15.  
 Of expert witness, see "Criminal Law," §§ 477-481; "Evidence," §§ 535-546.  
 Of fellow servant, see "Master and Servant," §§ 168-176.  
 Of guardian, see "Guardian and Ward," § 10.  
 Of interpreters in criminal prosecution, see "Criminal Law," § 642.  
 Of juror, see "Grand Jury," § 15; "Jury," §§ 83-142.  
 Of public officers, see "Officers," §§ 8-33.  
 Of receiver, see "Receivers," § 48.  
 Of servant, liability of master for injuries to third persons, see "Master and Servant," § 303.  
 Of trustees in bankruptcy, see "Bankruptcy," § 120.  
 Of trustees in general, see "Trusts," § 159.  
 Of witnesses in general, see "Witnesses," §§ 35-223.  
 Waiver of objection to arbitrator on ground of incompetency, see "Arbitration and Award," § 46.

### INCOMPETENT PERSONS.\*

#### Cross-References.

See "Drunkards"; "Insane Persons"; "Spendthrifts."

### INCONSISTENCY.\*

#### Cross-References.

Answer setting up title under 10 and 20 year limitations, see "Adverse Possession," § 111.  
 Ground of estoppel, see "Estoppel."  
 In pleading, see "Pleading," §§ 21, 93.

### INCONTINENCE.\*

#### Cross-References.

See "Adultery"; "Fornication"; "Incest"; "Lewdness."  
 Charge as slander, see "Libel and Slander," § 7.  
 Criminal conversation, see "Husband and Wife," §§ 340-354.

### INCONVENIENCE.\*

#### Cross-Reference.

Ground for refusal of injunction, see "Injunction," § 23.

### INCORPORATION.\*

#### Cross-References.

Appealability of order incorporating village, see "Appeal and Error," § 83.  
 In general, see "Corporations," §§ 1-30.  
 Of association, see "Associations," § 24.  
 Of beneficial associations, see "Beneficial Associations," § 3.  
 Of building and loan associations, see "Building and Loan Associations," § 3.

\*Annotation: Words and Phrases, same title.

- Of clubs, see "Clubs," § 3.
- Of colleges and universities, see "Colleges and Universities," § 3.
- Of electric companies, see "Electricity," § 3.
- Of exchanges or boards of trade, see "Exchanges," § 3.
- Of gas companies, see "Gas," § 5.
- Of insurance companies, see "Insurance," § 32.
- Of municipalities, see "Municipal Corporations," §§ 1-22.
- Of mutual benefit associations, see "Insurance," § 692.
- Of railroad companies, see "Railroads," § 14.
- Of religious societies, see "Religious Societies," § 4.
- Of street railroad companies, see "Street Railroads," § 14.
- Of surety companies, see "Principal and Surety," § 54.
- Of telegraph or telephone companies, see "Telegraphs and Telephones," § 5.
- Of warehouse companies, see "Warehousemen," § 4.
- Of water companies, see "Waters and Water Courses," § 185.

### **INCORPOREAL HEREDITAMENTS.\***

#### *Cross-References.*

See "Estates"; "Property."

### **INCORPOREAL PROPERTY.\***

#### *Cross-Reference.*

See "Property."

### **INCORRIGIBLE CHILDREN.\***

#### *Cross-References.*

Custody and control, see "Infants," §§ 12-20; "Reformatories."

### **INCREASE.\***

#### *Cross-References.*

- See "Accession."
- Accretion to land bordering on water, see "Navigable Waters," § 44; "Waters and Water Courses," § 93.
- Of animals in general, see "Animals," §§ 20, 27.
- Of animals, liabilities of carrier, see "Carriers," § 222.
- Of capital stock of corporations in general, see "Corporations," § 66.
- Of capital stock of bank, see "Banks and Banking," § 37.

### **INCRIMINATION.\***

#### *Cross-References.*

Of self, see "Criminal Law," §§ 316-319, 393-395, 405-410, 418, 516-538; "Jury," § 131; "Witnesses," §§ 292-310.

### **INCUMBENT.\***

#### *Cross-Reference.*

Of office, see "Officers."

## **INCUMBRANCES.**

#### *Cross-References.*

See "Chattel Mortgages"; "Liens"; "Maritime Liens"; "Mechanics' Liens"; "Mortgages."

Adjustment on partition, see "Partition," § 88.

Agreements in relation to incumbrances as within statute of frauds, see "Frauds, Statute of," § 56.

Allowing mortgage to remain unsatisfied as constituting fraudulent concealment of property, see "Attachment," § 37.

As defect in title of vendor defeating contract of sale, see "Vendor and Purchaser," §§ 130, 134.

Assumption of incumbrances by purchaser as payment of price of land, see "Vendor and Purchaser," § 181.

By devisees, as affecting debts of testator, see "Wills," §§ 843-845.

By heirs, as affecting debts of intestate, see "Descent and Distribution," §§ 132-134.

Covenants against, see "Covenants," §§ 42, 64, 96, 127.

Creditors' suit to subject interest in incumbered property, see "Creditors' Suit," § 8.

Effect of sale of incumbered property of bankrupt estate, see "Bankruptcy," § 261.

Fraudulent incumbrances on property as ground for attachment, see "Attachment," § 41.

Ground of liability of insurer under title insurance policy, see "Insurance," § 507½.

Incumbered property as subject to attachment, see "Attachment," §§ 53, 54.

Liabilities of devisees on incumbrances created by testator, see "Wills," § 840.

Liabilities of heirs on incumbrances created by intestate, see "Descent and Distribution," § 129.

Liens and charges as prior to assignment for creditors, see "Assignments for Benefit of Creditors," §§ 334-338.

Meaning of term as used in will, see "Wills," § 693.

Obstructions on highways and streets, see "Highways," §§ 153-164; "Municipal Corporations," §§ 691-700.

On assigned property as constituting preferred debt, see "Assignments for Benefit of Creditors," §§ 308, 310.

On demised premises, see "Landlord and Tenant," § 147.

On exempt property, see "Exemptions," §§ 79-88; "Homestead," §§ 110-133, 146.

On land sold, rights and liabilities as between vendor and purchaser, see "Vendor and Purchaser," § 197.

On land sold, rights and liabilities as between vendor or purchaser, and third persons, see "Vendor and Purchaser," § 211.

On property fraudulently conveyed, see "Fraudulent Conveyances," § 320.

On property insured, affecting validity of policy, see "Insurance," §§ 115, 283, 330.  
 On property, notice to attorney as notice to client, see "Attorney and Client," § 104.  
 On property of bankrupt, see "Bankruptcy," § 262.  
 On property of decedent in course of administration, see "Executors and Administrators," §§ 133, 151, 264, 398.  
 On property of intestate, see "Descent and Distribution," §§ 119-152.  
 On property of married woman's separate estate, see "Husband and Wife," §§ 146½-178.  
 On property of tenants in common, see "Tenancy in Common," § 30.  
 On property passing to purchaser at execution sale, see "Execution," § 268.  
 On property sold on foreclosure, see "Mortgages," § 372.  
 On property subject to dower, see "Dower," §§ 15, 26, 27, 44, 49, 57, 116.  
 Parol evidence as to incumbrance or assumption thereof, see "Evidence," §§ 395, 419, 423, 434, 441, 445, 460.  
 Right of prior incumbrancers to assert invalidity of fraudulent conveyance, see "Fraudulent Conveyances," § 220.  
 Rights and liabilities of life tenants as to incumbrances on property, see "Life Estates."  
 Rights and remedies of creditors of usurious incumbrancer, see "Usury," § 132.  
 Rights and remedies of subsequent incumbrancers as to usurious prior incumbrance, see "Usury," § 131.  
 Rights and remedies of subsequent purchasers of incumbered property as to usurious incumbrance, see "Usury," § 130.  
 Rights of assignee of incumbered property, see "Assignments for Benefit of Creditors," § 184.  
 Sale of attached goods subject to mortgage, see "Attachment," § 200.  
 Sale of incumbered property of assignor benefit of creditors, see "Assignments for Benefit of Creditors," § 248.  
 Sale of incumbered property of bankrupt, see "Bankruptcy," § 258.  
 Subjects and titles of acts relating to incumbrances, see "Statutes," § 115.  
 Transfer of property incumbered to full value, effect as constituting fraudulent conveyance, see "Fraudulent Conveyances," § 50.  
 Validity of payment of debt secured by unrecorded mortgage, see "Fraudulent Conveyances," § 28.

### IN CUSTODIA LEGIS.\*

#### Cross-Reference.

Seizure of bailed property under legal process as excuse for failure to redeliver, see "Bailment," § 27.

### INDEBITATUS ASSUMPSIT.\*

#### Cross-Reference.

See "Assumpsit, Action of."

### INDEBTEDNESS.\*

#### Cross-References.

See "Accord and Satisfaction"; "Account, Action on"; "Account Stated"; "Arrest," §§ 1-57; "Assignments for Benefit of Creditors"; "Assumpsit, Action of"; "Attachment"; "Bankruptcy"; "Compositions with Creditors"; "Compromise and Settlement"; "Contribution"; "Creditors' Suit"; "Debt, Action of"; "Execution"; "Fraudulent Conveyances"; "Garnishment"; "Insolvency"; "Marshaling Assets and Securities"; "Money Lent"; "Money Paid"; "Money Received"; "Novation"; "Payment"; "Release"; "Set-Off and Counterclaim"; "Use and Occupation"; "Work and Labor."

As defense to charge of forgery, see "Forgery," § 20.

Attachment of debts, see "Attachment," §§ 61, 62.

Averments as to indebtedness in affidavit for attachment, see "Attachment," §§ 105-108.

Book debt, see "Account, Action on," §§ 17, 18.

Charge on married woman's separate property, see "Husband and Wife," §§ 146½-178.

Community or separate debts of husband or wife, see "Husband and Wife," §§ 268, 269.

Constitutional guaranties against imprisonment for debt, see "Constitutional Law," § 83.

Deduction from valuation of property for taxation, see "Taxation," §§ 355-358, 381.

Evidence of, see "Evidence," §§ 236, 265, 317, 471, 601.

Imputation of, as libelous, see "Libel and Slander," § 6.

Of corporations in general, see "Corporations," §§ 447-487.

Of counties, see "Counties," §§ 149-196.

Of decedent, allowance and payment in course of administration, see "Executors and Administrators," §§ 202-287.

Of decedent, liability of devisees and legatees, see "Wills," §§ 827-848.

Of decedent, liability of heirs and distributees, see "Descent and Distribution," §§ 119-152.

Of electric companies, see "Electricity," § 8.

Of gas companies, see "Gas," § 8.

Of grantor, element of fraud as to creditors, see "Fraudulent Conveyances," § 54.

Of levee district, see "Levees," § 31.

Of municipal corporations, see "Municipal Corporations," §§ 858-955.

Of railroad companies, see "Railroads," §§ 145-202.

Of religious societies, see "Religious Societies," § 29.

Of school districts, see "Schools and School Districts," §§ 90, 91, 93-97.

Of states, see "States," §§ 113-168½.

\*Annotation: Words and Phrases, same title.

Of telegraph or telephone companies, see "Telegraphs and Telephones," § 17.  
 Of territories, see "Territories," § 29.  
 Of towns, see "Towns," §§ 46, 49-52.  
 Of United States, see "United States," §§ 79-91.  
 Pleading facts or conclusions as to indebtedness, see "Pleading," § 8.  
 Promise to answer for debt of another, see "Frauds, Statute of"; "Guaranty"; "Indemnity"; "Principal and Surety."  
 Subrogation to rights of creditor, see "Subrogation."

### INDECENCY.\*

#### *Cross-References.*

See "Obscenity."  
 Disturbance of public assemblage by indecent behavior, see "Disturbance of Public Assemblage," § 1.  
 Mailing obscene matter, see "Post Office," §§ 31, 32.

### INDECENT ASSAULT.\*

#### *Cross-Reference.*

See "Assault and Battery," §§ 54, 59, 78, 92, 96.

### INDECENT EXPOSURE.\*

#### *Cross-Reference.*

See "Obscenity," § 3.

### INDECENT PICTURES.

#### *Cross-Reference.*

See "Obscenity," § 5.

### INDECENT PROPOSAL.

#### *Cross-Reference.*

As tort, see "Torts," § 8.

### INDECENT PUBLICATIONS.\*

#### *Cross-References.*

See "Obscenity."  
 Violation of postal laws, see "Post Office," §§ 30-32.

## INDEMNITY.\*

### *Scope-Note.*

[INCLUDES contracts to make good or compensate for loss or damage, sustained or anticipated, from acts or omissions of others as well as those of the person indemnified, or to protect against claims of or liabilities to third persons; nature, requisites, validity, incidents, construction, operation, and effect of such contracts in general; bonds and other instruments in writing promising such indemnity; and rights, liabilities, and remedies of the parties.

[EXCLUDES contracts of guaranty (see "Guaranty") or insurance (see "Insurance"); indemnity mortgages (see "Mortgages"; "Chattel Mortgages"); rights of particular classes of persons or officers to demand indemnity, and matters relating only to indemnity given to any of them (see "Guardian and Ward"; "Executors and Administrators"; "Trusts"; "Officers"; "Sheriffs and Constables"; and other specific heads); contracts of indemnity by particular classes of persons (see "Infants"; "Insane Persons"; and other specific heads), partners (see "Partnership"), and corporations (see "Corporations"); and requirements of statute of frauds (see "Frauds, Statute of").

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature of obligation.
- § 2. Requisites and validity of contracts.
- § 3. — In general.
- § 4. — Bonds of indemnity.
- § 5. Construction and operation of contracts.
- § 6. — In general.
- § 7. — Parties.
- § 8. — Subject-matter.
- § 9. — Scope and extent of liability.
- § 10. — Notice to indemnitor.

\*Annotation: Words and Phrases, same title.

- § 11. — Accrual of liability.
- § 12. Discharge of indemnitor.
- § 13. Implied contracts.
- § 14. Conclusiveness, as against indemnitor, of former adjudication against indemnitee.
- § 15. Actions on contracts.
- § 16. Rights and remedies of indemnitor.

### *Cross-References.*

- See "Guaranty"; "Principal and Surety."
- Against liability for demurrage, see "Shipping," § 182.
- Against liability from result of action to remove disqualification as witness, see "Witnesses," § 113.
- Against mechanics' liens, see "Mechanics' Liens," §§ 312-317.
- Agreement of lessee of railroad right of way to indemnify lessor against liability for loss by fire as obligation of lessee's estate, see "Executors and Administrators," § 202.
- Agreement to indemnify stockholder for assumption and payment of corporate debt, see "Corporations," § 187.
- Application of statute of frauds, see "Frauds, Statute of," §§ 20-22.
- Authority of officers and agents of corporations, see "Corporations," § 416.
- By legatee or distributee of estate of decedent to executor or administrator, see "Executors and Administrators," § 299.
- By railroad for grant of public aid, see "Railroads," § 37.
- Conclusiveness on bondsmen of judgment settling final accounts of an ancillary executor, see "Executors and Administrators," § 535.
- Contract of indemnity as basis for claim against decedent's estate, see "Executors and Administrators," § 209.
- Contracts of corporations, see "Corporations," § 484.
- Contract to indemnify bail as against public policy, see "Contracts," § 129.
- Discharge of guardian as precluding surety from enforcing indemnifying mortgage, see "Guardian and Ward," § 163.
- Discharge of indemnitor of sheriff and constable, see "Sheriffs and Constables," § 147.
- Implied contract of indemnity of carrier by palace car company, see "Carriers," § 414.
- Indemnity insurance, see "Insurance," §§ 285, 332, 430-437, 509-514.
- Indemnity lands, see "Public Lands," §§ 53, 81, 223.
- Indemnity mortgages, see "Mortgages," §§ 18, 120, 405.
- Interest on money deposited as indemnity, see "Interest," § 9.
- Interest on money recovered as indemnity, see "Interest," § 10.
- Judgment over against connecting carrier in favor of initial carrier, see "Carriers," § 231.
- Liability of indemnitor to mortgagee for conversion, see "Chattel Mortgages," § 170.
- Liability of stevedores to indemnify vessel or owners for amounts paid for injuries to stevedores employees, see "Shipping," § 84.
- Of agent by principal from liability to third persons, see "Principal and Agent," § 77.
- Of municipality paying damages for injuries to animals by dogs, see "Animals," § 88.
- Power of municipal corporations, to make contract of indemnity, see "Municipal Corporations," § 226.
- Preference of corporate creator indemnified by corporate director, see "Corporations," § 545.
- Promise of indemnity to surety made after surety is bound as requiring new consideration, see "Contracts," § 75.
- Prosecution of suit by indemnity insurance company on behalf of indemnitee as champertous, see "Champerty and Maintenance," § 4.
- Security for damages instead of injunction, see "Injunction," § 196.
- Specific performance of contract, see "Specific Performance," § 77.
- Stipulations affecting validity of contract for municipal improvements, see "Municipal Corporations," § 339.
- Taking additional or substituted security as discharge of surety, see "Principal and Surety," § 109.
- To assignee for benefit of creditors, see "Assignments for Benefit of Creditors," § 263.
- To defendant in actions on lost instruments, see "Lost Instruments," § 18.
- To garnishee on rendition of judgment against him, see "Garnishment," § 184.
- To guardian, see "Guardian and Ward," § 68.
- To partner from liability to third persons, see "Partnership," § 85.
- To party injured by contempt of court, see "Contempt," §§ 73-79.
- To receiver, see "Receivers," § 106.
- To sheriff or constable, see "Sheriffs and Constables," §§ 89, 144.
- To surety by principal, see "Principal and Surety," §§ 147, 173-190½, 193.
- To town for support of paupers, see "Paupers," § 44.
- To trustee, see "Trusts," § 236.
- To trustee in bankruptcy, see "Bankruptcy," § 275.
- To United States marshal, see "United States Marshals," § 30.



### § 1. Nature of obligation.

(a) The difference between a contract of indemnity and a contract to pay a legal liability, is, that upon the former an action cannot be brought and a recovery had, until the liability is discharged; whereas upon the latter, the cause of action is complete when the liability attaches.—*Poe v. Philadelphia Casualty Co.*, 118 Md. 347, 84 Atl. 476. [Cited and annotated in 48 L. R. A. (N. S.) 184, 185, on insurance against injuring another's property or person as indemnity or liability insurance.]

### §§ 2-4. Requisites and validity of contracts.

#### Cross-References.

Inducing breach of trust, see "Contracts," § 113.

Taking additional or substituted security as discharge of surety, see "Principal and Surety," § 109.

#### Annotation.

Validity of agreement to indemnify bail in a criminal case.—14 L. R. A. 78; 20 L. R. A. (N. S.) 58, notes.

(a) The liability of defendants under their agreement, on selling to plaintiff their stock in a corporation, to indemnify her for any loss from the assets of the corporation not being what they warranted them, is not affected by the agreement being invalid as to the corporation, which joined therein.—*Marchant v. Hughlett*, 118 Md. 229, 84 Atl. 380; *Hughlett v. Marchant*, Id.

(b) K., alleging that he was in possession of the acceptance of L., upon an account of L., for \$118.22, for work done by him, requested L. to pay it, who refused, alleging that he was then under an acceptance, on account of the same work, of an order drawn on him by B., in the name of I. & B., which he should have to pay if the partnership was proved. K. then told L., if he would promise to pay him the amount, he would indemnify him against the claim of B., and, if he ever had anything to pay, he would pay him \$500. L. then proved the recovery of a judgment against him by K. for \$118.22, and the payment of it, and that judgment had been also recovered against him upon the order of B., of which he had paid \$102.12 for the debt and costs, and that he had offered to L. to pay him the difference between the order of B. and the plaintiff's note to K., and had

tendered the same before K., brought his suit against L. In an action by L. upon the agreement to indemnify him, it was held, that the giving of a note by L. to K. was a sufficient consideration for the contract to indemnify.—*Kent v. Lyles*, 7 G. & J. 73.

### § 5. Construction and operation of contracts.

#### § 6.—In general.

(a) The agreement of defendants, on selling stock in a corporation to plaintiff, to guarantee the assets of the corporation to be \$22,500 according to the items and valuations of the statement of the company as of that date, and to indemnify plaintiff for any loss from any discrepancy in the statement, is one of indemnity against loss from the assets not then being of that value.—*Marchant v. Hughlett*, 118 Md. 229, 84 Atl. 380; *Hughlett v. Marchant*, Id.

#### § 7.—Parties.

(a) Where a sheriff and collector made a deed of trust to indemnify his securities, it was held, that one of his deputies, who advanced him money to pay off official defalcations, was not within the terms of the deed; the grantor being liable in his individual character for the debt thus created.—*Wheeler v. Stone*, 4 Gill 38.

(b) An executrix was directed to deliver to her surety on a testamentary bond all the estate which remained in her hands. The surety entered into a bond of the same date, conditioned to deliver all the goods which should come into his possession to such person as should have the right to demand the same. Held, that a creditor of the estate was not such a party for the obligor could not pay the debts of the deceased or settle an account in the Orphans' Court, and therefore not being authorized to pay the debts, he could not be sued on the bond for not paying them.—*State v. Wright*, 4 H. & J. 148. [Cited and annotated in 40 L. R. A. 44, on assets passing to administrator de bonis non.]

### § 8.—Subject-matter.

#### Annotation.

Effect of provision in contract that employer shall be indemnified for all loss caused by negligence of contractor.—65 L. R. A. 506, note.

### § 9.—Scope and extent of liability.

(a) Where defendants, selling plaintiff stock in a corporation, warranted the value of the corporation's assets to be a certain amount, and agreed to indemnify her against loss from overvaluation, and stipulated as a collateral guaranty to the value to give plaintiff a note for \$4,000, payable a year after date, and renewable from year to year, with an annual reduction of \$500, if plaintiff so elect, recovery on the note, on a breach of the warranty appearing, cannot be defeated on the theory that it is not due, but must be renewed, with at most a recovery of \$500.—*Marchant v. Hughlett*, 118 Md. 229, 84 Atl. 380; *Hughlett v. Marchant*, Id.

(b) Where defendants, on selling stock to plaintiff, warranted the value of the corporation's assets to be according to a certain statement, and agreed to indemnify her for any "loss arising from any discrepancies" in their valuation, they are liable only to the extent that the guaranteed value exceeded the actual value at the time of sale of the stock.—*Marchant v. Hughlett*, 118 Md. 229, 84 Atl. 380; *Hughlett v. Marchant*, Id.

### § 10.—Notice to indemnitor.

### § 11.—Accrual of liability.

(a) Under a bond to save harmless from litigation, a judgment against the obligee fixes the obligor's liability, and the obligee may pay it without waiting for execution.—*Creamer v. Stephenson*, 15 Md. 211.

(b) A father executed a bond to his married daughter, with condition to convey certain premises, without delay, to her, her heirs and assigns, in fee simple. The daughter and her husband were in possession of the premises anterior to the date of the bond, and remained in possession until her death. The father afterwards died, and by his will devised the premises to the only son and heir of the daughter. On a suit by the surviving husband against the executor of the father for breach of the condition in the lifetime of the wife, it was held that plaintiff was entitled only to nominal damages.—*Rawlings v. Adams*, 7 Md. 26.

(c) To entitle the obligee in a bond of indemnity to recover, he must, in general, show actual payment by him. It is not sufficient

to prove his liability.—*Gillespie v. Creswell*, 12 G. & J. 36.

(d) A promise of general indemnity is broken by the recovery of a judgment against the promisee, and he may maintain an action on it without proof of payment of the judgment.—*Brooke v. Macnemara*, 1 H. & McH. 80.

### § 12. Discharge of indemnitor.

#### Cross-References.

Effect of discharge of guardian as precluding surety from enforcing indemnifying mortgage, see "Guardian and Ward," § 163.

Indemnitor of sheriff or constable, see "Sheriffs and Constables," § 147.

(a) A railroad company, in changing its tracks necessitating changes in wagon roads in the vicinity of the railroad bridge, created a defect in the road resulting in the death of a traveler. A judgment against the county commissioners was obtained for the death. Agreements were made between the railroad company and the commissioners; the first one providing that if the railroad company would do certain things it would be relieved from further expense "in connection with the construction or maintenance of public roads in that vicinity," and the second providing that in consideration of defendant having widened the road under the railroad bridge the commissioners released it "from any further responsibility covering the construction of maintenance of said roadway." Both agreements were made after the death of the traveler and the last one after the judgment against the commissioners had been recovered. Held, that the agreements did not affect the right of recovery on any claim which the commissioners may have had against the defendant company growing out of its prior default or negligence.—*Baltimore & O. R. Co. v. County Com'rs of Howard County*, 113 Md. 404, 77 Atl. 930. [Cited and annotated in 36 L. R. A. (N. S.) 61; on right of action of one legally responsible for, against one whose negligence caused another's death; in 40 L. R. A. (N. S.) 1148, on right of one constructively liable for tort, to contribution or indemnity from one actually responsible for commission; in 40 L. R. A. (N. S.) 1166, 1169, 1170, on right of municipality to indemnity or contribution from one whose tort it is held liable; in 40 L. R. A. (N. S.) 1173, on conclusiveness of judgment against constructive

tortfeasor in action for contribution or indemnity.]

### § 13. Implied contracts.

#### Cross-References.

Of carrier by a palace car company, see "Carriers," § 414.

Liability of servant to master subjected to liability for wrongful acts of servant, see "Master and Servant," § 312.

Substitution of third person paying debt to rights of creditor against debtor, see "Subrogation."

#### Annotation.

Right of employer who has been held liable for tort of servant or contractor to recover over from him.—40 L. R. A. (N. S.) 1153, note.

Right of municipality to recover indemnity from one for whose tort it has been held liable.—40 L. R. A. (N. S.) 1165, note.

(a) In an action by county commissioners against a railroad company for indemnity for being compelled to pay damages for the death of a traveler on a highway rendered defective by the railroad company, where the railroad company had not been notified of the action against the county commissioners in which the judgment was recovered, and requested to come in and defend, and had not participated in such action, the county commissioners' measure of damage was properly limited to such damages as were sustained by decedent's widow, plaintiff in the former action, as the direct consequence of his death, not exceeding the amount paid by the county commissioners on account of the judgment, with interest on such judgment to the date of payment.—*Baltimore & O. R. Co. v. County Com'rs of Howard County*, 113 Md. 404, 77 Atl. 930. [Cited and annotated, see supra, § 12.]

(b) The general rule that, wherever the wrongful act of one person results in liability being imposed on another, the other may have indemnity from the person actually guilty of the wrong, is subject to the exception that as between actual tort-feasors the law will not enforce indemnity.—*Baltimore & O. R. Co. v. County Com'rs of Howard County*, 113 Md. 404, 77 Atl. 930. [Cited and annotated, see supra, § 12.]

(c) To render applicable the rule that there can be no indemnity or contribution among tort-feasors, there must be joint participation in the tort, and the parties must

be in equal degree guilty; actual knowledge and failure of duty of one of the parties not being sufficient to invoke the rule. And hence that county commissioners have actual knowledge that a railroad company had created a defect in a highway, rendering it dangerous to travelers, and had failed to discharge their duty of repairing the highway, would not constitute them joint tort-feasors with the railroad company with respect to the death of a traveler by reason of such defect, so that the commissioners could not be indemnified against the railroad company for damages paid for such death.—*Baltimore & O. R. Co. v. County Com'rs of Howard County*, 113 Md. 404, 77 Atl. 930. [Cited and annotated, see supra, § 12.]

(d) County commissioners permitted the approach to a bridge in a public highway to remain in an unsafe condition for several years, and a traveler was killed in consequence thereof. A railroad had changed the location of a highway by raising the surface thereof as it approached the bridge, but had failed to guard the traveling public from going out of the road over the embankment. Held, that the commissioners, being compelled to pay the damages for the death of the traveler, were entitled to compel indemnity from the railroad, notwithstanding any principle of *pari delicto*.—*Baltimore & O. R. Co. v. Howard County Com'rs*, 111 Md. 176, 73 Atl. 656. [Cited and annotated in 36 L. R. A. (N. S.) 61, on right of action of one legally responsible for, against one whose negligence caused another's death; in 40 L. R. A. (N. S.) 726, on effect upon surety of judgment against principal; in 40 L. R. A. (N. S.) 1147, on right of one constructively liable for tort, to contribution or indemnity from one actually responsible for commission; in 40 L. R. A. (N. S.) 1166, 1169, on right of municipality to indemnity or contribution from one for whose tort it is held liable.]

(e) Though, as between joint wrongdoers, one paying the whole damages has no right to indemnity from the other, a public corporation charged with the duty of maintaining the public highways in a safe condition has a remedy over against a person so using a highway as to produce an injury for which the public corporation was compelled to pay damages, unless the public corporation was also a wrongdoer.—*Baltimore & O. R. Co.*

*v. Howard County Com'rs*, 111 Md. 176, 73 Atl. 656. [Cited and annotated, see supra.]

(f) A traveler recovered judgment against a county for injuries sustained by him by reason of the defective condition of a canal bridge connecting a public highway. The canal company was legally bound to keep the bridge in repair, had notice of the suit, and joined in defending it. The county, having paid the judgment, brought this action against the canal company to recover the amount so paid and the costs and counsel fees incurred in that defense. *Held* maintainable.—*Chesapeake & O. Canal Co. v. Allegany County Com'rs*, 57 Md. 201, 40 Am. Rep. 430. [Cited and annotated in 40 L. R. A. (N. S.) 1166, 1167, 1168, on right of municipality to indemnity or contribution from one for whose tort it is held liable; in 40 L. R. A. (N. S.) 1174, on conclusiveness of judgment against constructive tort-feasor in action for contribution or indemnity.]

(g) A county, which was held liable for injuries caused by the defective condition of a bridge over a canal, is not in *pari delicto* with the company, where the defect was not known to the county commissioners and was not obvious or of long standing.—*Chesapeake & O. Canal Co. v. Allegany County Com'rs*, 57 Md. 201, 40 Am. Rep. 430. [Cited and annotated, see supra.]

#### § 14. Conclusiveness, as against indemnitor, of former adjudication against indemnitee.

##### Cross-Reference.

Judgment against indemnitee as bar to action by him against indemnitor, see "Judgment," § 630.

##### Annotation.

Conclusiveness of judgment against constructive tort-feasor in subsequent action for indemnity.—40 L. R. A. (N. S.) 1172, note.

(a) Where a judgment was recovered against county commissioners for the death of a traveler caused by a defective highway without giving notice of the action to a railroad guilty of changing the highway so as to make it defective, and the company did not participate in the action, the judgment was not conclusive on the company in an action by the commissioners against it for indemnity, but it was admissible as a part of

the case.—*Baltimore & O. R. Co. v. Howard County Com'rs*, 111 Md. 176, 73 Atl. 656. [Cited and annotated, see supra, § 13.]

#### § 15. Actions on contracts.

##### Cross-References.

Accrual of right of action as affecting limitations, see "Limitation of Actions," § 56.

Against indemnitors of sheriffs and constables, see "Sheriffs and Constables," §§ 127-143.

Pleading bond, see "Pleading," § 32.

Pleading statute of frauds, see "Frauds, Statute of," § 153.

Venue, see "Venue," § 7.

(a) That within two years after defendants warranted the assets of a corporation, stock in which they sold to plaintiff, to be \$22,500 in excess of liabilities of \$49,000, and agreed to indemnify her against loss from overvaluation, the assets produced, on liquidation under a receivership, only \$4,700, is some evidence that they were not at the time of the agreement of the value warranted.—*Marchant v. Hughlett*, 118 Md. 229, 84 Atl. 380; *Hughlett v. Marchant*, *Id.*

(b) Where defendants, on selling stock to plaintiff, warranted the value of the corporation's assets, and agreed to indemnify her for any loss from overvaluation, and gave their note as collateral security, tender of the stock by plaintiff to defendants was not a prerequisite to recovery on the note; the stock not only being worthless, but defendants having denied absolutely their liability.—*Marchant v. Hughlett*, 118 Md. 229, 84 Atl. 380; *Hughlett v. Marchant*, *Id.*

(c) That blue prints provided by railroad engineers for railroad construction did not take into consideration the amount of fill required by reason of subsidence where the fill crossed marsh land, and that the contractor did not provide therefor, *held* no defense to an action on the contractor's bond.—*Etna Indemnity Co. v. Baltimore, S. P. & C. Ry. Co.*, 117 Md. 523, 84 Atl. 166.

(d) Defendant's prayer, asking the court to charge that plaintiff could not recover unless it were found that defendant was solely responsible by its negligence for the accident and death of decedent, was properly rejected, since under such a rule recovery in every indemnity case growing out of negligence would be prevented, since, as to third

persons, the negligence of plaintiff is either admitted or established by judgment.—*Baltimore & O. R. Co. v. County Com'rs of Howard County*, 113 Md. 404, 77 Atl. 930. [Cited and annotated, see supra, § 12.]

(e) Defendant was not injured by the modification of its prayer, asking a charge that the jury under the pleadings could not consider the abutment or the position of the abutment of the railroad bridge in the road as mentioned in the evidence as an element or condition rendering the approach to the bridge unsafe or dangerous to public travel, so that the jury was charged that under the pleadings plaintiff was not entitled to recover because of the placing of the abutment of the railroad bridge in the road mentioned in the evidence; it receiving all the benefit upon the subject-matter of the prayer to which it was entitled.—*Baltimore & O. R. Co. v. County Com'rs of Howard County*, 113 Md. 404, 77 Atl. 930. [Cited and annotated, see supra, § 12.]

(f) There being evidence that county commissioners created the dangerous place in a highway where decedent was killed, and that the changes made by a railroad company but slightly increased the existing danger, the railroad company, in an action against it for indemnity, was properly protected by a charge that the jurors could not find for plaintiff, unless they found that defendant, in making changes in the highway, created a dangerous condition, and that the accident was caused by such dangerous condition, and that the burden was upon plaintiff to show by a preponderance of evidence that defendant created such condition, and that such condition caused the death.—*Baltimore & O. R. Co. v. County Com'rs of Howard County*, 113 Md. 404, 77 Atl. 930. [Cited and annotated, see supra, § 12.]

(g) In an action by county commissioners against a railroad for indemnity for being compelled to pay the damages for the death of a traveler caused by defective highway which had been rendered defective by the railroad, the record in the action against the county commissioners for the death of the traveler was admissible to show that an action has been brought and recovery had therein.—*Baltimore & O. R. Co. v. Howard*

*County Com'rs*, 111 Md. 176, 73 Atl. 656. [Cited and annotated, see supra, § 13.]

(h) A plea by the obligors in a counter-security bond given to the sureties on an executor's bond, that such sureties had not defended the action against them, but had suffered judgment by default, is defective in not averring that there was a legal defense which they might have made.—*Brown v. Murdock*, 16 Md. 521.

(i) After a bond was given to save harmless against anticipated litigation and the expenses thereof, there was a judgment by default against the obligee. *Held*, in a suit on the bond, that the obligee could show that it was agreed that the obligor should take care of the suit, to show that he was not negligent in suffering a default.—*Creamer v. Stephenson*, 15 Md. 211.

(j) An action on a bond of indemnity is not barred until 12 years after the death of the principal debtor and creditor, or until 12 years after the cause of action accrued.—*Gillespie v. Creswell*, 12 G. & J. 36.

(k) On a bill to recover the value of negroes, which M. held in trust for the complainant, and which had been sold through the intervention of an agent who considered himself entitled to the proceeds, it was agreed between M. and the agent that if M. would delay settlement and permit the agent to retain the money, and defend the bill, he would indemnify M. from all loss. A final decree was rendered against M., who then sued the agent on his contract of indemnity. *Held*, that it was competent for the agent to give in evidence that he had apprised M. in due time of the nature of the defense, which he desired should be made to the suit, and of the sources by which he meant to establish it, so as to enable M. by resorting to such evidence to ascertain if he could be justified in putting in such an answer as was desired; and also to show that M. had failed to comply with his contract by refusing to permit him to defend the bill.—*Morris v. Chapman's Adm'r*, 2 G. & J. 286.

#### § 16. Rights and remedies of indemnitor.

##### *Cross-References.*

Right to intervene in action on principal obligation, see "Parties," § 40.

Subrogation of indemnitor of surety to priority of creditor, see "Subrogation," § 7.

### INDEMNITY INSURANCE.

#### Cross-Reference.

See "Insurance," §§ 285, 332, 430-437, 509-514.

### INDENTURES.\*

#### Cross-References.

See "Deeds"; "Mortgages."

Of apprenticeship, see "Apprentices," §§ 8-19.

### INDEPENDENT CONTRACTORS.\*

#### Cross-References.

Creation of contract, see "Master and Servant," § 5.

Delegation of master's duty to provide safe appliances to independent contractor, see "Master and Servant," § 103.

Distinguished from servant, see "Bailment," § 9.

Liability for acts and omissions, see "Master and Servant," §§ 315-324; "Municipal Corporations," § 751; "Negligence," § 55.

Person injured as servant or independent contractor, see "Master and Servant," § 88.

Regulation of hours of work of employees, see "Master and Servant," § 13.

Right to laborer's lien, see "Master and Servant," § 82.

### INDEPENDENT COVENANTS.\*

#### Cross-Reference.

See "Covenants," § 26.

### INDEPENDENT STIPULATIONS.

#### Cross-References.

See "Contracts," § 173; "Sales," § 65; "Vendor and Purchaser," § 58.

### INDEPENDENT WILLS.

#### Cross-Reference.

See "Executors and Administrators," § 7.

### INDETERMINATE SENTENCES.

#### Cross-References.

See "Criminal Law," §§ 978, 991, 995, 1206-1208, 1216; "Reformatories," § 8. Affecting right to trial by jury, see "Jury," § 24.

Of infants, see "Infants," § 69.

### INDEX.\*

#### Cross-References.

Abstract as index of record, see "Appeal and Error," § 586.

Subject of copyright, see "Copyrights," § 4.

To abstract of record, on appeal, see "Appeal and Error," § 584.

To case made or statement of facts on appeal, see "Appeal and Error," § 563.

To judgment record, see "Judgment," §§ 285, 769.

To records in general, see "Records," § 8.

To record of conveyances as affecting notice to subsequent purchasers, see "Vendor and Purchaser," § 231.

To record of conveyances in general, see "Deeds," § 86.

To transcript or return on appeal or writ of error, see "Appeal and Error," § 606.

## INDIANS.\*

### Scope-Note.

[INCLUDES persons wholly or partly of Indian blood; their rights and disabilities in general; protection and regulation of such persons; and government of the Indian country and of the Indian reservations.

[EXCLUDES marriage between Indians or between Indians and persons of other races (see "Marriage"), and titles to lands derived from Indians (see "Public Lands").

[For complete list of matters excluded, see cross-references, post.]

### Analysis.

- § 1. Who are Indians.
- § 2. Status of Indian nations or tribes.
- § 3. Treaties and engagements with Indian nations or tribes.
- § 4. Officers of Indian affairs.
- § 5. Status and disabilities of Indians in general.

\*Annotation: Words and Phrases, same title.

- § 6. Protection of persons and personal rights in general.
- § 7. Support and supplies.
- § 8. Instruction.
- § 9. Lands.
- § 10. — Title and rights to Indian lands in general.
- § 11. — Cession by treaties.
- § 12. — Reservations or grants to Indian nations or tribes.
- § 13. — Allotment or partition.
- § 14. — Grants and patents to individual Indians.
- § 15. — Alienation in general.
- § 16. — Lease.
- § 17. — Cutting timber.
- § 18. — Descent.
- § 19. — Trespass.
- § 20. — Judicial sale.
- § 22. — Adverse possession and improvements by intruders.
- § 23. Personal property.
- § 24. Contracts.
- § 25. Liabilities for depredations and injuries to property.
- § 26. Crimes by Indians out of Indian country or reservation.
- § 27. Actions.
- § 28. Probate jurisdiction of state courts.
- § 29. Eligibility to vote.
- § 30. Eligibility for office or public employment or service.
- § 31. Admission to citizenship.
- § 32. Jurisdiction and government of Indian country and reservations in general.
- § 33. Regulation of intercourse with Indians.
- § 34. Selling or furnishing liquors.
- § 35. Introducing liquors into Indian country.
- § 36. Crimes in Indian country or reservations.
- § 37. Actions for penalties under laws relating to Indians.
- § 38. Criminal prosecutions.
- § 39. Government and laws of Indian Territory and inhabitants thereof.

#### *Cross-References.*

Admission to citizenship, mandamus to compel, see "Mandamus," § 60.  
 As citizens, see "Citizens," § 2.  
 Claims under Indian treaties or statutes for relief of Indians, see "United States," § 105.  
 Constitutionality of legislation authorizing Dawes commission to the Five Civilized Tribes to determine citizenship, see "Constitutional Law," § 92.  
 Evidence of adoption of Indian child, see "Adoption," § 17.  
 Exclusion of Indian lands from territory, see "Territories," § 14.  
 Exemption from taxation, see "Taxation," § 193.  
 Fishery rights, see "Fish," § 3.

Implied repeal of special by general act relating to leasehold estates in Indian lands, see "Statutes," § 162.  
 Indian depredation claims, see "United States," § 106.  
 Indian depredation claims, findings of court of claims, see "Courts," § 468.  
 Indian depredation claims, jurisdiction of Court of Claims, see "Courts," § 456.  
 Indian reservation as part of taxing district, see "Taxation," § 252.  
 Indians as slaves, see "Slaves," §§ 3, 23.  
 Indians as "foreign citizens or subjects," within jurisdiction of federal courts, see "Courts," § 321.  
 Injury to servant in Indian Territory, see "Master and Servant," § 86.

Judicial notice as to location of Indian tribe, see "Criminal Law," § 304.  
 Judicial notice of conditions existing in Indian reservations, see "Criminal Law," § 304.  
 Judicial notice of laws and customs of Indians, see "Evidence," § 36.  
 Jurisdiction of Court of Claims to determine relative rights of parties to an Indian treaty, see "Courts," § 449.  
 Jurisdiction of federal court of action by Indian for false imprisonment as involving construction of laws and treaties of United States, see "Courts," § 284.  
 Jurisdiction of federal courts as dependent on status of Indians as to citizenship, see "Courts," § 321.  
 Liability of United States, see "United States," § 106.  
 Limitations, see "Limitation of Actions," § 127.  
 Mandamus to commission to Five Civilized Tribes, see "Mandamus," §§ 24, 64, 73.  
 Mandamus to Secretary of Interior to compel payment to Indian of proceeds of sale of lands, see "Mandamus," § 73.  
 Marriage by Indian custom, see "Marriage," § 15.  
 Operation of state election laws in Indian reservations, see "Elections," § 48.  
 Power of Congress to regulate commerce with Indian tribes, see "Commerce," § 6.  
 Presenting false claim for disbursements connected with department of Indian affairs, see "United States," § 121.  
 Rights of bona fide holder of note for lease of Indian lands, see "Bills and Notes," § 375.  
 Right to crops as between lessees, see "Crops," § 2.  
 Taxation of Indian lands, see "Taxation," §§ 4, 181.  
 Taxation of personal property on Indian reservations, see "Counties," § 193; "Taxation," §§ 4, 19, 40, 44, 109.  
 Taxation of property of Indian post trader, see "Taxation," § 6.  
 Voting precinct in Indian reservation, see "Elections," § 48.

### *Criminal prosecutions.*

Preliminary warrant, see "Criminal Law," § 207.  
 Provision of constitution and laws of Creek Nation as to grand jury, see "Grand Jury."

### *Lands.*

Actions to recover lands in Choctaw Nation, see "Ejectment," § 2.  
 Color of title, see "Adverse Possession," §§ 71, 81.  
 Compensation of receiver of land office, see "Public Lands," § 95.  
 Conflict with grant of school lands, see "Public Lands," § 52.  
 Contract for service, in connection with purchase of Indian lands as contravening public policy, see "Contracts," § 108.  
 Conveyance of improvements fraudulent as to creditors, see "Fraudulent Conveyances," § 51.  
 Determination of adverse claims, see "Quiet-ing Title," § 22.  
 Disposal of state lands derived from Indians, see "Public Lands," § 164.  
 Exception from railroad grant, see "Public Lands," § 76.  
 Exemption of improvements from execution as affecting validity of conveyance as to creditors, see "Fraudulent Conveyances," § 51.  
 Extrinsic aid to construction of statutes, see "Statutes," § 218.  
 Indian lands and improvements as exempt property of bankrupt, see "Bankruptcy," § 396.  
 Judicial notice of title, see "Evidence," § 23.  
 Liability to taxation, see "Taxation," § 181.  
 Nature of right of Indians in public lands occupied by them, see "Public Lands," §§ 1-21.  
 Operation of statute of frauds, see "Frauds, Statute of," § 72.  
 Reservation of Indian lands from grants to railroads, see "Public Lands," § 76.  
 Right to jury trial to determine disposition of proceeds, see "Jury," § 19.  
 Subject and title of acts relating to the disposition of lands, see "Statutes," § 115.  
 Titles to lands derived from Indians, see "Public Lands," §§ 225-229.

### *Annotation.*

Validity of divorce according to Indian customs.—35 L. R. A. (N. S.) 795, note.  
 Question relating to Indians, as federal question.—62 L. R. A. 537, note.  
 Jurisdiction to punish crimes committed by or against Indians.—24 L. R. A. 169, note.  
 Purchase of real property from Indians.—10 L. R. A. 132, note.  
 Exemption of Indians from taxation.—13 L. R. A. 512, note.  
 Right to remedies in court.—13 L. R. A. 542, note.

In tribal relation not citizens of state.—7 L. R. A. 125, note.

### INDIAN TERRITORY.

#### *Cross-References.*

Courts, see "Courts," § 435.  
 Government and laws of Indian Territory and inhabitants thereof, see "Indians," § 39.



## INDICTMENT AND INFORMATION.\*

*Scope-Note.*

[INCLUDES formal written accusations of public offenses, presented by grand juries or preferred by prosecuting officers, whether in form of indictment, presentment, information, or complaint; necessity for presentment or indictment by grand jury; finding, indorsing, filing, and requisites of such accusations, objections thereto, and motions to quash, etc., demurrers thereto, and amendment thereof; variance between averments and proof; and conviction of offense included in that charged.

[EXCLUDES preliminary complaints in criminal cases, and proceedings thereon before indictment (see "*Criminal Law*"); organization of and inquisitions by grand juries (see "*Grand Jury*"); accusations of particular offenses, and proceedings thereon (see specific heads); arraignment and pleas to indictments and trial thereof (see "*Criminal Law*"); and review of proceedings thereon (see "*Criminal Law*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Necessity of Indictment or Presentment.**

- § 1. Necessity of formal accusation in general.
- § 2. Constitutional and statutory provisions.
- § 3. Offenses which must be prosecuted by indictment.
- § 4. Proper form of accusation.
- § 5. Waiver.

**II. Finding and Filing of Indictment or Presentment.**

- § 6. Jurisdiction of court.
- § 7. Term of court or time of finding.
- § 8. Prosecutor or informer.
- § 9. Preliminary proceedings.
- § 10. Finding of grand jury.
- § 11. Return and filing or record.
- § 12. Return and filing of evidence.
- § 13. Filing away indictment.
- § 14. Loss or destruction.
- § 15. Successive indictments for same offense.
- § 16. Failure to find, and resubmission.

**III. Formal Requisites of Indictment.**

- § 17. Form and contents in general.
- § 18. Constitutional and statutory provisions.
- § 19. Statutory forms.
- § 20. Caption.
- § 21. — In general.
- § 22. — Title or description of court.
- § 23. — Place of holding court.
- § 24. — Term or time of holding court.
- § 25. — Description of grand jury.
- § 26. — Title of cause or names of parties.

---

\*Annotation: Words and Phrases, same title.

**III. Formal Requisites of Indictment—Continued.**

- § 27. Commencement.
- § 28. — In general.
- § 29. — Venue.
- § 30. — Presentment or accusation.
- § 31. Charge or body of indictment.
- § 32. Conclusion.
- § 33. Signature.
- § 34. Indorsements.

**IV. Filing and Formal Requisites of Information or Complaint.**

- § 35. Nature and purpose in general.
- § 36. Constitutional and statutory provisions.
- § 37. Statutory forms.
- § 38. Jurisdiction of court.
- § 39. Authority to file.
- § 40. Leave of court.
- § 41. Preliminary proceedings.
- § 42. Time of filing.
- § 43. Filing and record.
- § 44. Loss or destruction.
- § 45. Successive informations or complaints for same offense.
- § 46. Formal requisites of information.
- § 47. — In general.
- § 48. — Caption or title.
- § 49. — Commencement.
- § 50. — Conclusion.
- § 51. — Signature.
- § 52. — Verification or accompanying affidavit.
- § 53. — Indorsements.
- § 54. Formal requisites of complaint.

**V. Requisites and Sufficiency of Accusation.**

- § 55. Applicability of rules of pleading in general.
- § 56. Constitutional requirements as to accusation.
- § 57. Statutory provisions as to statement of offense.
- § 58. Subject-matter of allegations.
- § 59. — Designation of offense or grade or degree thereof.
- § 60. — Elements and incidents of offense in general.
- § 61. — Matter judicially noticed.
- § 62. — Matters of presumption or implication.
- § 63. — Matters of fact or conclusions.
- § 64. — Conclusions of law from facts alleged.
- § 65. — Matters of evidence.
- § 66. — Matters of defense in general.
- § 67. — Matter in avoidance of bar of statute of limitations.
- § 68. — Matters peculiarly within knowledge of accused.
- § 69. — Matters not known to grand jury.
- § 70. Directness and positiveness.
- § 71. Certainty and particularity.
- § 72. Disjunctive or alternative allegations.

**V. Requisites and Sufficiency of Accusation—Continued.**

- § 73. Repugnancy.
- § 74. Language and form of allegations.
- § 75. — In general.
- § 76. — Technical terms.
- § 77. — Videlicet or scilicet.
- § 78. — Abbreviations, numerals, and symbols.
- § 79. — Mistakes in writing, grammar, or spelling.
- § 80. — Erasures and interlineations.
- § 81. Designation and description of accused.
- § 82. Codefendants.
- § 83. Principals in second degree.
- § 84. Accessories before the fact.
- § 85. Accessories after the fact.
- § 86. Place of offense.
- § 87. Time of offense.
- § 88. Intent.
- § 89. Knowledge, notice, and demand.
- § 90. Matter of inducement.
- § 91. Felonious or otherwise unlawful nature of act.
- § 92. Act or omission constituting offense.
- § 93. — In general.
- § 94. — Act or omission of agent or servant.
- § 95. — Specific facts.
- § 96. — Circumstances making act or omission criminal.
- § 97. Separate counts.
- § 98. — In general.
- § 99. — Reference from one count to another.
- § 100. — Defects and omissions.
- § 101. Designation of person injured or others.
- § 102. Description of real property.
- § 103. Description of personal property.
- § 104. Quantity or value of personal property.
- § 105. Ownership, possession, or custody of property.
- § 106. Description of or setting forth written or printed matter.
- § 107. Statutory offenses.
- § 108. — Reference to or recital of statute.
- § 109. — Elements and incidents of offense in general.
- § 110. — Language of statute.
- § 111. — Exceptions and provisos.
- § 112. — Validity as charge of offense at common law.
- § 113. Matter of aggravation in general.
- § 114. Previous convictions and habitual criminals.
- § 115. Attempts.
- § 116. Solicitation.
- § 117. Construction in general.
- § 118. Surplusage and unnecessary matter.
- § 119. — In general.
- § 120. — Matter of description.

**V. Requisites and Sufficiency of Accusation—Continued.**

- § 121. Bill of particulars.
- § 122. Variance from preliminary proceedings.
- § 123. Aider by preliminary complaint or warrant.

**VI. Joinder of Parties, Offenses, and Counts, Duplicity, and Election.**

- § 124. Joinder of parties.
- § 125. Duplicity.
- § 126. Joinder of counts.
- § 127. — In general.
- § 128. — Same offense.
- § 129. — Different offenses in same transaction.
- § 130. — Distinct offenses in general.
- § 131. — Felonies and misdemeanors.
- § 132. Election.

**VII. Motion to Quash or Dismiss, and Demurrer.**

- § 133. Mode of making objections in general.
- § 134. Statutory provisions.
- § 135. Motion to quash or set aside.
- § 136. — Nature of remedy.
- § 137. — Grounds.
- § 138. — Form and requisites in general.
- § 139. — Time for making.
- § 140. — Hearing and determination.
- § 141. — Order or judgment.
- § 142. — Operation and effect of decision.
- § 143. — Failure to move.
- § 144. Motion to dismiss.
- § 145. Demurrer.
- § 146. — Nature of remedy.
- § 147. — Grounds.
- § 148. — Form and requisites in general.
- § 149. — Time for filing.
- § 150. — Hearing and determination.
- § 151. — Order or judgment.
- § 152. — Operation and effect of decision overruling demurrer.
- § 153. — Operation and effect of decision sustaining demurrer.
- § 154. — Failure to demur.

**VIII. Amendment.**

- § 155. Defects and omissions requiring amendment in general.
- § 156. Statutory provisions.
- § 157. Defects cured by statute.
- § 158. Indictment.
- § 159. — In general.
- § 160. — Amendment to conform to proof.
- § 161. Information.
- § 162. Complaint.
- § 163. Bill of particulars.

**IX. Issues, Proof, and Variance.**

- § 164. Issues in general.
- § 165. Matters to be proved.
- § 166. — In general.
- § 167. — Surplusage and unnecessary allegations.
- § 168. — Part of charge sufficient to constitute offense.
- § 169. Evidence admissible under pleadings.
- § 170. Variance between allegations and proof.
- § 171. — In general.
- § 172. — Statutory provisions.
- § 173. — Designation and description of accused.
- § 174. — Principals and accessories.
- § 175. — Place of offense.
- § 176. — Time of offense.
- § 177. — Intent.
- § 178. — Knowledge or notice.
- § 179. — Mode or means of committing offense.
- § 180. — Designation of persons other than accused.
- § 181. — Description, quantity, or value of property.
- § 182. — Ownership, possession, or custody of property.
- § 183. — Description of written or printed matter.
- § 184. — Matters alleged to be unknown to grand jury.

**X. Conviction of Offense Included in Charge.**

- § 185. Mode or form of accusation in general.
- § 186. Constitutional and statutory provisions.
- § 187. Sufficiency of charge of greater offense.
- § 188. Sufficiency of charge of lesser offense.
- § 189. Lesser grade or degree of offense charged.
- § 190. Attempt to commit offense charged.
- § 191. Different offense included in offense charged.
- § 192. Sufficiency or failure of proof of offense charged.

**XI. Waiver of Defects and Objections, and Aider by Verdict.**

- § 193. Defects and objections which may be cured or waived.
- § 194. Constitutional and statutory provisions.
- § 195. Waiver.
- § 196. — Objections to indictment or information.
- § 197. — Objections to rulings on motion or demurrer.
- § 198. — Objections to amendments.
- § 199. — Objections on ground of variance.
- § 200. Aider by verdict.
- § 201. — Applicability of doctrine in general.
- § 202. — Defects cured.
- § 203. — Verdict on good and bad counts.

*Cross-References.*

See "Grand Jury."

Amendment of statutes, setting forth provisions as amended, see "Statutes," § 141.

Amendment on proceedings at new trial, see "Criminal Law," § 965.

Applicability of instructions to issues, see "Criminal Law," § 814.

Appealability of orders, see "Criminal Law," § 1023.

As commencement of prosecution to toll limitations, see "Criminal Law," § 157.  
 As evidence in criminal prosecution, see "Criminal Law," § 383.  
 Assignments of errors on appeal, see "Criminal Law," § 1129.  
 Capias after indictment, see "Criminal Law," § 263.  
 Certiorari as proper mode of review, see "Criminal Law," § 1011.  
 Compelling calling of witness indorsed on indictment or information, see "Criminal Law," § 666.  
 Consolidation of indictments at trial, see "Criminal Law," § 619.  
 Continuance on amendment of indictment, see "Criminal Law," § 586.  
 Conviction of different offense included in same act as bar to subsequent prosecution, see "Criminal Law," § 209.  
 Conviction of lower as acquittal of higher and greater offense charged, see "Criminal Law," § 193½.  
 Conviction of lower offense as bar to subsequent prosecution, see "Criminal Law," § 199.  
 Conviction of offense not within jurisdiction of court, see "Criminal Law," § 102.  
 Coroner's inquest before indictment, see "Coroners," § 22.  
 Decisions of state courts as to validity of statutory provisions as authority in federal courts, see "Courts," § 366.  
 Defects as ground for arrest of judgment, see "Criminal Law," § 970.  
 Defects as ground for direction of verdict, see "Criminal Law," § 753.  
 Defects as ground for habeas corpus, see "Habeas Corpus," § 30.  
 Defects as ground for new trial, see "Criminal Law," §§ 914, 915, 918, 936.  
 Delay in finding as ground for discharge of accused, see "Criminal Law," § 576.  
 Deprivation of life or liberty without due process of law, see "Constitutional Law," § 265.  
 Designation and description of parties idem sonans, see "Names," § 16.  
 Disclosure of names of private prosecutors to accused, see "Criminal Law," § 630.  
 Effect of invalidity of appointment of prosecuting attorney, see "District and Prosecuting Attorneys," § 2.  
 Effect on limitations of failure to find indictment, see "Criminal Law," § 146.  
 Error waived in appellate court, see "Criminal Law," § 1178.  
 Estoppel to allege error on appeal, see "Criminal Law," § 1137.  
 Ex post facto laws, see "Constitutional Law," § 199.  
 Failure to file at term as ground for arrest of judgment, see "Criminal Law," § 968.  
 Filing away and reinstatement of indictment as affecting right to discharge of accused for delay, see "Criminal Law," § 576.

Filing indictment after conviction as affecting right to commit accused, see "Criminal Law," § 999.  
 Finding of grand jury as evidence on question of existence of probable cause for prosecution, see "Malicious Prosecution," § 24.  
 Following state statutes and practice in federal courts in proceedings by motion to quash, dismiss, or demur, see "Courts," § 337.  
 Indictment as affecting time for taking proceedings for removal of cause from state to federal court, see "Removal of Causes," § 79.  
 Indorsement of names of witnesses affecting right to call witness, see "Criminal Law," § 628.  
 Information as preliminary complaint, see "Criminal Law," § 210.  
 Information or complaint for search and seizure of intoxicating liquors, see "Intoxicating Liquors," § 248.  
 Informations to remove officers, see "Officers," § 74.  
 Inspection of minutes of grand jury, see "Criminal Law," § 627½.  
 Instructions as to offense included in charge, see "Criminal Law," § 795.  
 Larceny of indictment, see "Larceny," §§ 12, 13, 23, 24.  
 Liability of indorsers for malicious prosecution, see "Malicious Prosecution," § 3.  
 Limitations as affected by filing away indictment, see "Criminal Law," § 158.  
 Loss as affecting right to sentence, see "Criminal Law," § 979.  
 Loss as affecting time to prepare defenses, see "Criminal Law," § 577.  
 Mandamus to compel filing, see "Mandamus," § 61.  
 Mandamus to compel quashing, see "Mandamus," § 4.  
 Mandamus to compel vacation of order quashing, see "Mandamus," § 61.  
 Matters to be shown by record on appeal, see "Criminal Law," § 1086.  
 Motion to quash, dismiss, or demur as bar to subsequent prosecution, see "Criminal Law," § 177.  
 Name of foreman of grand jury idem sonans, see "Names," § 16.  
 Necessity and requisites of complaint or information on summary trial of accused, see "Criminal Law," § 252.  
 Necessity and sufficiency of indictment to authorize extradition, see "Extradition," § 32.  
 Necessity of bill of exceptions presenting grounds of review, see "Criminal Law," § 1090.  
 Necessity of rearraignment after indictment, see "Criminal Law," § 261.  
 Necessity, requisites, and sufficiency of instructions on issues of case, see "Criminal Law," § 770.  
 Necessity, sufficiency, and effect in proceedings for removal of accused to other district for trial, see "Criminal Law," § 242.

- New indictment after limitations, see "Criminal Law," § 160.
- New indictment on change of venue, see "Criminal Law," §§ 116, 142.
- New indictment on granting new trial, see "Criminal Law," § 965.
- New indictment on transfer of cause to other court, see "Criminal Law," § 101.
- Order filing away indictment as nol. pros., see "Criminal Law," § 302.
- Order of trial of separate indictments, see "Criminal Law," § 621.
- Plea to substituted accusation, see "Criminal Law," § 261.
- Pleading in bar of limitations in preliminary complaint, see "Criminal Law," § 211.
- Pleading in bar of limitations in preliminary warrant, see "Criminal Law," § 218.
- Pleas in abatement, see "Criminal Law," §§ 278-285.
- Preliminary complaint, see "Criminal Law," §§ 209-214.
- Preliminary examination after indictment, see "Criminal Law," § 224.
- Presence of accused on hearing of proceedings relating to indictment or information, see "Criminal Law," § 636.
- Presumptions on appeal, see "Criminal Law," § 1144.
- Quashing of indictment affecting right of accused to discharge for delay, see "Criminal Law," § 576.
- Reading to jury, see "Criminal Law," §§ 633, 703, 770.
- Record of conviction, showing as to finding and filing of indictment, see "Criminal Law," § 995.
- Recovery by indictment of penalty for unlawful entry on Indian reservation, see "Indians," § 38.
- Recovery of fines by indictment, see "Fines," § 8.
- Recovery of penalty by indictment, see "Penalties," § 16.
- Reference to indictment in defining offense in instructions to jury, see "Criminal Law," § 772.
- Reswearing jury after correction as to defendant's name, see "Jury," § 148.
- Return of indictment on holiday, see "Holidays," § 5.
- Reversal for defects, see "Criminal Law," § 1186.
- Review of questions as dependent on prejudicial nature of error, see "Criminal Law," §§ 1167, 1172; "Homicide," § 337.
- Review of questions as dependent on presentation of objections in lower court, see "Criminal Law," § 1032.
- Review of questions as dependent on presentation of same by record, see "Criminal Law," § 1116.
- Review of questions as dependent on taking of exceptions in lower court, see "Criminal Law," § 1050.
- Review of questions involving discretion of court, see "Criminal Law," § 1149.
- Right of accused to plead and be tried by jury on overruling demurrer, see "Jury," § 29.
- Right of prosecution to review, see "Criminal Law," § 1024.
- Right to prosecute by indictment for breach of condition of pardon, see "Pardon," § 14.
- Rulings on motions to quash or demur, ground for new trial, see "Criminal Law," § 915.
- Scope and contents of record on appeal, see "Criminal Law," § 1088.
- Scope and extent of review in general, see "Criminal Law," § 1134.
- Self-executing constitutional provisions, see "Constitutional Law," §§ 29, 32.
- Sentence on conviction on different counts, see "Criminal Law," § 984.
- Service of copy of indictment or information before trial, see "Criminal Law," § 627.
- Statute authorizing prosecution by either information or indictment as abridging privileges and immunities, see "Constitutional Law," § 204.
- Substitution as question for court, see "Criminal Law," § 734.
- Successive indictments as affecting former jeopardy, see "Criminal Law," §§ 161-204.
- Successive indictments affecting time to prepare defense, see "Criminal Law," § 577.
- Suspension of trial to receive presentment, see "Criminal Law," § 649.
- Sustaining motion to file away indictment as denying speedy trial, see "Criminal Law," § 573.
- Time of filing as affecting right to discharge of accused for delay, see "Criminal Law," § 576.
- Time to plead to successive informations, see "Criminal Law," § 265.
- Trial of indictments together, see "Criminal Law," § 620.
- Trial on plea to part of counts, see "Criminal Law," § 618.
- Validity as element of former jeopardy, see "Criminal Law," § 170.
- Validity of indictment preferred by grand jury organized by de facto judge, see "Judges," § 6.
- Variance between indictment and copy served on accused, see "Criminal Law," § 627.
- Variance between indictment and verdict as ground for arrest of judgment, see "Criminal Law," § 971.
- Verdict on indictment containing several counts, see "Criminal Law," § 878.
- Want of jurisdiction to convict of crime included in charge as ground for arrest of judgment, see "Criminal Law," § 968.
- Against particular classes of persons.*  
See "Aliens," § 17; "Brokers," § 5; "Carriers," §§ 21, 38; "Convicts," § 5; "Coroners," § 25; "Corporations," § 533; "Druggists," § 12; "Factors," § 4; "Hawkers and Peddlers," § 7; "Husband and Wife," § 312; "Innkeepers," § 15; "Justices of the Peace," § 30; "Livery Stable Keepers," § 14; "Municipal Corporations," § 1043; "Officers," § 122; "Parent and Child," § 17; "Physicians and Surgeons," § 6; "Railroads," §§ 12, 255; "Sheriffs and Constables," § 153; "Warehousemen," § 36.

Attorneys, see "Champerly and Maintenance," § 10.  
 Bankrupts, see "Bankruptcy," § 494.  
 Carriers, see "Carriers," §§ 21, 38; "Civil Rights," § 15.  
 Convicts, see "Convicts," § 5; "Escape," § 9.  
 County officers, see "Counties," § 60.  
 Employers, see "Master and Servant," § 18.  
 License officers, see "Intoxicating Liquors," § 61.  
 Mortgagors, see "Chattel Mortgages," § 232.  
 Municipal officers, see "Municipal Corporations," § 174.  
 Officers and agents of banks, see "Banks and Banking," §§ 62, 85, 257.  
 Officers and agents of corporations in general, see "Corporations," § 324.  
 Officers of turnpike companies, see "Turnpikes and Toll Roads," §§ 8, 32.  
 Persons dealing with carriers, see "Carriers," § 22.  
 Policemen, see "Municipal Corporations," § 190.  
 Prison officers, see "Prisons," § 10.  
 United States senators, see "United States," § 21½.

*For particular offenses.*

See "Abduction," §§ 5, 6; "Abortion," §§ 4-6; "Adulteration," §§ 10, 11; "Adultery," §§ 7, 8; "Affray," § 4; "Arson," §§ 18-25; "Assault and Battery," §§ 73-80; "Bigamy," §§ 4, 5; "Breach of the Peace," §§ 4, 5; "Bribery," §§ 6, 7; "Burglary," §§ 18-28; "Common Scold," § 3; "Compounding Felony," § 5; "Conspiracy," § 43; "Counterfeiting," § 16; "Disorderly Conduct," §§ 7, 8; "Disorderly House," §§ 12, 13; "Disturbance of Public Assemblage," §§ 6, 7; "Embezzlement," §§ 26-35; "Embriacery," § 4; "Escape," § 9; "Extortion," §§ 13, 14; "False Pretenses," §§ 26-38; "Fires," § 4; "Forcible Entry and Detainer," § 57; "Forgery," §§ 26-34; "Fornication," § 4; "Fraud," § 69; "Gaming," §§ 85-94; "Homicide," §§ 127-142; "Incest," §§ 10, 11; "Kidnapping," § 4; "Larceny," §§ 28-40; "Lewdness," §§ 5, 6; "Libel and Slander," § 152; "Malicious Mischief," §§ 4, 5; "Mayhem," § 4; "Miscegenation," § 4; "Nuisance," § 91; "Obscenity," §§ 11-13; "Obstructing Justice," §§ 11, 12; "Perjury," §§ 19-29; "Prize Fighting," § 3; "Prostitution," § 3; "Rape," §§ 20-35; "Receiving Stolen Goods," § 7; "Rescue," § 3; "Riot," § 5; "Robbery," §§ 17-20; "Seduction," § 37; "Sodomy," § 5; "Threats," § 5; "Trespass," § 87; "Unlawful Assembly," § 2; "Vagrancy," § 2.  
 Abandonment of children by parent or neglect to support, see "Parent and Child," § 17.  
 Abandonment of wife by husband, see "Husband and Wife," § 312.  
 Administering poison, see "Poisons," § 9.  
 Barratry, see "Champerly and Maintenance," § 10.  
 Bastardy, see "Bastards," § 50.  
 Causing death, see "Death," § 53.

Common barratry, see "Champerly and Maintenance," § 10.  
 Communication of disease from infected animals, see "Animals," § 36.  
 Concealment of birth and death of bastard, see "Bastards," § 18.  
 Crimes committed in Indian country or reservations, see "Indians," § 38.  
 Cruelty to animals, see "Animals," § 42.  
 Cruelty to pauper, see "Paupers," § 53.  
 Cutting and removal of timber from public lands, see "Public Lands," § 15.  
 Cutting of or defacing brands on logs, see "Logs and Logging," § 37.  
 Disbarment proceedings, see "Attorney and Client," § 52.  
 Disobeying order of superintendent of drawbridge, see "Navigable Waters," § 20.  
 Drunkenness, see "Drunkards," § 11.  
 Failure of officers of turnpike company to file report, see "Turnpikes and Toll Roads," §§ 8, 32.  
 Failure to make or making false tax list, see "Taxation," § 335½.  
 Failure to make report of animals slaughtered, see "Animals," § 15.  
 Failure to repair highway, see "Highways," § 108.  
 Failure to repair turnpike or toll road, see "Turnpikes and Toll Roads," § 32.  
 Failure to support pauper, see "Paupers," § 53.  
 Failure to work on highway, see "Highways," § 151.  
 Fencing land of another, see "Fences," § 29.  
 Fraudulent breach of contract to perform services, see "Master and Servant," § 67.  
 Fraudulent entry on public lands, see "Public Lands," § 21.  
 Fraudulent sale of goods by warehousemen, see "Warehousemen," § 36.  
 Fraudulent transfer of property, see "Fraudulent Conveyances," § 331.  
 Horse racing in highway, see "Highways," § 186.  
 Illegal issuance of county warrants, see "Counties," § 102.  
 Illegal issuance of warehouse receipts, see "Warehousemen," § 36.  
 Illegal sales of fertilizers, see "Agriculture," § 7.  
 Illegal traffic in agricultural products, see "Agriculture," § 16.  
 Illegal use of street, see "Municipal Corporations," § 707.  
 Injuring or killing animals, see "Animals," § 45.  
 Interference with relation of master and servant, see "Master and Servant," § 345.  
 Keeping dog without license, see "Animals," § 4.  
 Maintaining lotteries, see "Lotteries," § 28.  
 Making false census return, see "Census," § 6.  
 Making or presentation of false claim against United States, see "United States," § 123.  
 Negligence or misconduct in office, see "Officers," § 122.  
 Obstruction of highway, see "Highways," § 164.



Obstruction of navigation, see "Navigable Waters," § 27.  
 Obstruction of private road, see "Private Roads," § 10.  
 Offenses connected with operation of railroads, see "Railroads," §§ 12, 255.  
 Offenses incident to supply or use of water, see "Waters and Water Courses," § 266.  
 Operating hotel without license, see "Innkeepers," § 15.  
 Peonage, see "Slaves," § 24.  
 Permitting animals to run at large, see "Animals," § 57.  
 Poisoning wells, see "Poisons," § 5.  
 Pollution of navigable waters, see "Navigable Waters," § 35.  
 Practicing medicine without authority, see "Physicians and Surgeons," § 6.  
 Presentation of false pension claim, see "Pensions," § 13.  
 Procuring illegal marriage, see "Marriage," § 53.  
 Removal of dead bodies, see "Dead Bodies," § 8.  
 Removal of landmarks, see "Boundaries," § 56.  
 Removal of property on which there is a landlord's lien, see "Landlord and Tenant," § 253.  
 Removal or destruction of fences, see "Fences," § 28.  
 Removal or secretion of records, see "Records," § 21.  
 Removal or transfer of mortgaged property by mortgagor, see "Chattel Mortgages," § 232.  
 Sending forged telegrams, see "Telegraphs and Telephones," § 79.  
 Standing stallion without license, see "Animals," § 4.  
 Taking or exacting usury, see "Usury," § 149.  
 Use of unauthorized or false weights or measures, see "Weights and Measures," § 12.  
 Usurpation of office, see "Officers," § 89.  
 Violations of anti-trust laws, see "Monopolies," § 31.  
 Violations of bankrupt laws, see "Bankruptcy," § 494.  
 Violations of Chinese exclusion acts, see "Aliens," § 38.  
 Violations of county civil service laws, see "Counties," § 102.  
 Violations of customs laws, see "Customs Duties," § 184.

Violations of election laws, see "Elections," § 328.  
 Violations of estray laws, see "Animals," § 65.  
 Violations of fish laws, see "Fish," § 15.  
 Violations of forest laws, see "Woods and Forests," § 12.  
 Violations of game laws, see "Game," § 9.  
 Violations of health regulations, see "Health," § 40.  
 Violations of internal revenue laws, see "Internal Revenue," § 47.  
 Violations of interstate commerce acts, see "Carriers," § 38.  
 Violations of laws for protection of children, see "Infants," § 20.  
 Violations of license laws in general, see "Licenses," § 42.  
 Violations of liquor laws, see "Intoxicating Liquors," §§ 200-223.  
 Violations of municipal ordinances, see "Municipal Corporations," § 639.  
 Violations of pension laws, see "Pensions," § 13.  
 Violations of police regulations, see "District of Columbia," § 20.  
 Violations of postal laws, see "Post Office," § 48.  
 Violations of regulations relating to articles of food or drink, see "Food," § 20.  
 Violations of regulations relating to druggists, see "Druggists," § 12.  
 Violations of regulations relating to explosives, see "Explosives," § 5.  
 Violations of regulations relating to factors, see "Factors," § 4.  
 Violations of regulations relating to hawkers and peddlers, see "Hawkers and Peddlers," § 7.  
 Violations of regulations relating to livery men, see "Livery Stable Keepers," § 14.  
 Violations of regulations relating to payment of wages, see "Master and Servant," § 84.  
 Violations of regulations relating to trademarks and trade-names, see "Trade-Marks and Trade-Names," § 51.  
 Violations of revenue laws, see "Internal Revenue," § 46.  
 Violations of statutes relating to marking and branding animals, see "Animals," § 13.  
 Violations of statutory provisions for protection of employees, see "Master and Servant," § 18.  
 Violations of Sunday laws, see "Sunday," § 29.

## I. NECESSITY OF INDICTMENT OR PRESENTMENT.

### *Cross-References.*

Defects ground for arrest of judgment, see "Criminal Law," § 970.  
 Recovery by indictment of penalties for unlawful entry on Indian reservation, see "Indians," § 38.

Recovery of fines by indictment, see "Fines," § 8.  
 Recovery of penalties by indictment, see "Penalties," § 16.  
 Right to prosecute by indictment for breach of condition of pardon, see "Pardon," § 14.  
 Statute authorizing prosecution by either indictment or information as abridging privileges and immunities, see "Constitutional Law," § 204.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 1. Necessity of formal accusation in general.

### § 2. Constitutional and statutory provisions.

#### Cross-References.

Amendment of indictment, see post, § 156.  
Self executing provisions of Constitution, see "Constitutional Law," §§ 29, 32.

#### Annotation.

Constitutional or statutory provisions for prosecution of felony upon information without indictment as an ex post facto law.—38 L. R. A. (N. S.) 600, note.

(a) The constitutional provisions, giving to the accused the right to be informed of the charge against him and to a copy of the indictment, is intended to secure him a public trial, and does not prohibit the prosecution of minor offenses without indictment.—*In re Glenn*, 54 Md. 572. (See Const. Decl. Rights, art. 21.) [Cited and annotated in 13 L. R. A. 42, on number and agreement of jurors necessary to valid verdict.]

### § 3. Offenses which must be prosecuted by indictment.

#### Cross-References.

Offenses which may be prosecuted summarily, see "Criminal Law," § 249.  
Right to waive jury trial, see "Jury," § 29.

#### Annotation.

What is an infamous crime within constitutional provisions requiring presentment by a grand jury.—17 L. R. A. 764, note.

### § 4. Proper form of accusation.

#### Cross-Reference.

Objection for purpose of review, see "Criminal Law," § 1032.

### § 5. Waiver.

## II. FINDING AND FILING OF INDICTMENT OR PRESENTMENT.

#### Cross-References.

Defects ground for quashing, see post, § 137.  
Filing of information or complaint, see post, §§ 35, 38-45.  
Defects in presentment as ground for new trial, see "Criminal Law," § 914.  
Objections for purpose of review, see "Criminal Law," § 1032.  
Powers and duties of grand jury, see "Grand Jury," §§ 26, 27.  
Proceedings of grand jury, see "Grand Jury," §§ 33-39.  
Showing in record of conviction, see "Criminal Law," § 995.

### § 6. Jurisdiction of court.

#### Cross-References.

On change of venue, see "Criminal Law," § 142.  
Validity of indictment preferred by grand jury organized by de facto judge, see "Judges," § 6.

### § 7. Term of court or time of finding.

#### Cross-References.

Delay in finding as ground for discharge of accused, see "Criminal Law," § 576.  
Failure to file at term as ground for arrest of judgment, see "Criminal Law," § 968.

### § 8. Prosecutor or informer.

#### Cross-Reference.

Disclosure of names of private prosecutors, see "Criminal Law," § 630.

### § 9. Preliminary proceedings.

#### Cross-References.

Defects ground for motion to quash, see post, § 137.  
Mode of making objections, see post, § 133.  
Variance from indictment, see post, § 122.  
Coroner's inquest, see "Coroners," § 22.  
Right to preliminary examination after indictment, see "Criminal Law," § 224.

### § 10. Finding of grand jury.

### § 11. Return and filing or record.

#### Cross-References.

Demurrer for failure to file, see post, § 147.  
Indorsement, see post, § 34.  
Return on holidays, see "Holidays," § 5.  
Suspension of trial to receive presentment, see "Criminal Law," § 649.

#### Annotation.

Necessity, mode, and record of bringing indictment into court.—26 L. R. A. (N. S.) 683, note.

### § 12. Return and filing of evidence.

#### Cross-References.

Inspection of minutes of grand jury, see "Criminal Law," § 627½.  
On holiday, see "Holidays," § 5.

### § 13. Filing away indictment.

#### Cross-References.

After conviction as affecting right to commit accused, see "Criminal Law," § 999.  
Appealability of orders relating to, see "Criminal Law," § 1023.  
Effect on limitations, see "Criminal Law," § 158.

Filing away and reinstatement of indictment as affecting right of accused to discharge for delay, see "Criminal Law," § 576.

Order filing away indictment as nol. pros., see "Criminal Law," § 302.

Sustaining motion to file away indictment as denying right to speedy trial, see "Criminal Law," § 573.

#### § 14. Loss or destruction.

##### *Cross-References.*

As affecting time to prepare defense, see "Criminal Law," § 577.

Effect on right to sentence, see "Criminal Law," § 979.

Matters to be shown by record on appeal, see "Criminal Law," § 1086.

Plea to substituted accusation, see "Criminal Law," § 261.

#### § 15. Successive indictments for same offense.

##### *Cross-References.*

Grounds for dismissal, see post, § 144.

Order on demurrer to indictment, see post, § 151.

After limitations, see "Criminal Law," § 160.

As affecting time to prepare defense, see "Criminal Law," § 577.

Former jeopardy, see "Criminal Law," §§ 161-204.

New indictment on change of venue, see "Criminal Law," §§ 116, 142.

On granting new trial, see "Criminal Law," § 965.

On transfer of cause to other court, see "Criminal Law," § 101.

Plea in abatement for pendency of other indictment, see "Criminal Law," § 280.

Substitution as question for court, see "Criminal Law," § 734.

#### § 16. Failure to find, and resubmission.

##### *Cross-Reference.*

Effect on limitations, see "Criminal Law," § 146.

### III. FORMAL REQUISITES OF INDICTMENT.

##### *Cross-References.*

Aider by verdict, see post, § 202.

Formal requisites of complaint, see post, § 54.

Formal requisites of information, see post, §§ 47-53.

Form and language of accusation, see post, § 75.

Defects ground for arrest of judgment, see "Criminal Law," § 970.

Objections for purpose of review, see "Criminal Law," § 1032.

#### § 17. Form and contents in general.

##### *Cross-Reference.*

Grounds for demurrer, see post, § 147.

#### §§ 18-31. (See Analysis.)

#### § 32. Conclusion.

##### *Cross-References.*

Amendment, see post, § 159.

Construction in general, see post, § 117.

Accusation in summary proceedings, see "Criminal Law," § 252.

Defects as ground for arrest of judgment, see "Criminal Law," § 970.

Defects as ground for new trial, see "Criminal Law," § 915.

Preliminary complaint or affidavit, see "Criminal Law," § 211.

(a) The provision of Const. art. 4, § 18, requiring all indictments to conclude "against the peace, government and dignity of the state," is mandatory.—*State v. Dycer*, 85 Md. 246, 36 Atl. 763.

(b) The omission to charge in an indictment for libeling a judge that the same was "to the great scandal and disgrace of the administration of justice in Baltimore," is immaterial to affect the validity of the indictment, as all allegations of such character, beyond the conclusion, "against the peace and dignity of the state," are surplusage.—*Richardson v. State*, 66 Md. 205, 7 Atl. 43.

(c) An indictment under the local option law is sufficient if it charges the offense as "contrary to the form of the act of Assembly in such case made and provided."—*Slymer v. State*, 62 Md. 237.

(d) Where a statute creates an offense which did not exist at common law, or changes the nature or degree of an offense existing at common law, an indictment for such offense must conclude, "against the form of the statute"; but, if the statute only direct the mode of punishment for a common-law offense, the indictment may conclude "contra pacem." Hence an indictment for stealing coin, concluding "contra pacem," will support punishment under the act of 1809, c. 138, which only changes the punishment.—*State v. Evans*, 7 G. & J. 290. (See Code [vol. 3], art. 27, §§ 507, et seq.)

(e) An indictment for stealing coin charges an offense at common law; and the party indicted, upon conviction, may be punished, under act 1809, c. 138, upon an indictment which concludes "contra pacem"; that act repealing the common-law punishment, and providing only for a different punishment of

the offense.—*State v. Evans*, 7 G. & J. 290.  
(See Code [vol. 3], art. 27, §§ 287, 502, 507, et seq.)

(f) Where an indictment is founded upon a single statute, and not upon any other in conjunction with it, its conclusion must be in the singular.—*State v. Cassel*, 2 H. & G. 407. [Cited and annotated in 36 L. R. A. (N. S.) 942, on sufficiency of description of money in larceny indictment.]

(g) Where an offense is punishable either at common law, or under an act of the Legislature, the conclusion in the indictment, "contra formam statuti," is not improper.—*Davis v. State*, 3 H. & J. 154.

### § 33. Signature.

#### Cross-References.

Aider by verdict, see post, § 202.

Separate counts, see post, § 100.

Defects as ground for arrest of judgment, see "Criminal Law," § 970.

Defects as ground for new trial, see "Criminal Law," § 915.

#### Annotation.

Signing indictment or information in name of deputy.—42 L. R. A. (N. S.) 886, note.

### § 34. Indorsements.

#### Cross-References.

Failure as ground for motion to quash, see post, § 139.

Hearing on motion to quash for failure to indorse, see post, § 140.

Mode of making objections, see post, § 133.

Absence of indorsement ground for arrest of judgment, see "Criminal Law," § 970.

Compelling calling of witnesses indorsed on indictment, see "Criminal Law," § 666.

Liability of indorsers for malicious prosecution, see "Malicious Prosecution," § 3.

Name of foreman of grand jury, idem sonans, see "Names," § 16.

Names of witnesses, idem sonans, see "Names," § 16.

## IV. FILING AND FORMAL REQUISITES OF INFORMATION OR COMPLAINT.

#### Cross-References.

Aider by verdict, see post, § 202.

Finding and filing of indictment or presentment, see ante, §§ 6-16.

Formal requisites of indictment, see ante, § 17.

Form and language of accusation, see post, § 75.

Necessity of indictment, see ante, § 3.

Necessity of information, see ante, § 1.

Defects ground for arrest of judgment, see "Criminal Law," § 970.

Information as preliminary complaint, see "Criminal Law," § 210.

Mandamus to compel filing, see "Mandamus," § 61.

Objections for purpose of review, see "Criminal Law," § 1032.

### §§ 35-39. (See Analysis.)

### § 40. Leave of court.

#### Cross-References.

Objections for purpose of review, see "Criminal Law," § 1032.

Presence of accused on application to obtain, see "Criminal Law," § 636.

### § 41. Preliminary proceedings.

#### Cross-References.

Defects ground for motion to quash, see post, § 137.

Mode of making objection, see post, § 133.

Necessity of showing in information, see post, § 47.

Variance from information, see post, § 122.

In summary prosecutions, see "Criminal Law," § 252.

### § 42. Time of filing.

#### Cross-References.

Delay ground for motion to quash, see post, § 137.

Within statutes providing for discharge of accused for delay in prosecution, see "Criminal Law," § 576.

### § 43. Filing and record.

#### Cross-References.

Aider by verdict, see post, § 202.

Objection for purpose of review, see "Criminal Law," § 1032.

### § 44. Loss or destruction.

#### Cross-References.

Objection to substitution for purpose of review, see "Criminal Law," § 1032.

Preliminary complaint, see "Criminal Law," § 214.

### § 45. Successive informations or complaints for same offense.

#### Cross-References.

Indictment after information, see ante, § 4.

Necessity of presence of accused on granting authority to file new information, see "Criminal Law," § 636.

Time to plead, see "Criminal Law," § 265.

### §§ 46-53. Formal requisites of information.

#### Cross-Reference.

Compelling calling of witness indorsed on information, see "Criminal Law," § 666.

Of names of witnesses as affecting right to use witness, see "Criminal Law," § 628.

In summary proceedings, see "Criminal Law," § 252.

*Verification or accompanying affidavit.*

Aider by verdict, see post, § 202.

Defects ground for demurrer, see post, § 147.

Defects ground for motion to quash, see post, § 137.

Waiver of objections, see post, § 143.

In summary prosecutions, see "Criminal Law," § 252.

Objections for purpose of review, see "Criminal Law," § 1032.

*Annotation.*

Necessity of verifying information.—L. R. A. 1915B, 651, note.

Signing indictment or information in name of deputy.—42 L. R. A. (N. S.) 886, note.

Necessity that indictment or information show on its face that prosecution is carried on in the name and by the authority of the state.—26 L. R. A. (N. S.) 1034, note.

Waiver of verification of information.—31 L. R. A. (N. S.) 805, note.

**§ 54. Formal requisites of complaint.**

**V. REQUISITES AND SUFFICIENCY OF ACCUSATION.**

*Cross-References.*

Aider by verdict, see post, §§ 201-203.

Amendment of indictment, see post, §§ 159, 160.

Insufficient allegations as ground for arrest of judgment, see "Criminal Law," § 970.

Objections for purpose of review, see "Criminal Law," § 1032.

**§ 55. Applicability of rules of pleading in general.**

**§ 56. Constitutional requirements as to accusation.**

*Cross-References.*

Statutory offenses, see post, §§ 108-112.

Summary proceedings, see "Criminal Law," § 248.

(a) Act 1908, c. 179, § 14, fining one convicted of violating the liquor law the second time, and providing that the second conviction may be ascertained by the court from its dockets, violates Maryland Declaration of Rights, art. 21, entitling every person to be informed of the accusation against him, as not requiring indictment to charge a second offense.—*Goeller v. State*, 119 Md. 61, 85 Atl. 954. [Cited and annotated in 51 L. R.

A. (N. S.) 387, on effect of excessive sentence.]

**§ 57. Statutory provisions as to statement of offense.**

*Cross-References.*

Statutory offenses, see post, §§ 108-112.

Decisions of state courts as to validity of statutory provisions as authority in federal courts, see "Courts," § 366.

**§§ 58-69. Subject-matter of allegations.**

*Cross-References.*

See "Homicide," § 139; "Larceny," § 28.

Description of offense in record, see ante, § 11.

*Matters in avoidance of bar of statute of limitations.*

Repugnancy, see post, § 73.

In preliminary complaint, see "Criminal Law," § 211.

In preliminary warrant, see "Criminal Law," § 218.

*Matters not known to grand jury.*

Persons injured, see post, § 101.

Variance, see post, § 184.

In prosecution for embezzlement, see "Embezzlement," § 28.

In prosecutions for homicide, see "Homicide," § 135.

Ownership of property stolen, see "Larceny," § 32.

*Matters of defense.*

Negating exceptions and provisos in statutes, see post, § 111.

In prosecution for practicing medicine without authority, see "Physicians and Surgeons," § 6.

(a) In the margin of an information the county and the state were named, and in the body of the information the place was described as a building erected in the water of the Patapsco river, "and distant less than one hundred yards of the land shore of the First precinct of the Fifth election district of the county aforesaid." *Held*, that the venue was sufficiently laid, as the court will take judicial notice that the river was in the county named.—*Acton v. State*, 80 Md. 547, 31 Atl. 419.

**§ 70. Directness and positiveness.**

*Cross-Reference.*

Grounds for demurrer, see post, § 147.

(a) Since the offense of stealing or of receiving United States bonds, prohibited by Code 1860, art. 30, §§ 101, 163, was unknown to the common law, upon an indictment therefor nothing can be taken by indictment; and an indictment thereunder for

receiving four "pieces of printed paper, commonly called 'United States five-twenty bonds of the issue of the year 1865,' each of the value of one thousand dollars current money," is fatally defective for not alleging that the pieces were bonds or certificates of indebtedness issued or "granted by or under the authority of the United States."—*Kearney v. State*, 48 Md. 16. (See Code 1911 [vol. 3], art. 27, §§ 287, 423, 502.)

### § 71. Certainty and particularity.

#### Cross-References.

Grounds for demurrer, see post, §§ 147, 148.

Mode of raising objection, see post, § 133.  
Vagueness as ground for arrest of judgment, see "Criminal Law," § 970.

(a) A count in an indictment which is sufficiently certain to inform the accused of the offense with which he is charged and of the party upon whom it was committed, will not be quashed on demurrer.—*Harne v. State*, 39 Md. 552.

(b) A general demurrer to an indictment, the averments of which, although diffuse, inartistic, defective in form, and in some respects, perhaps, insufficient, charge substantially and in direct, positive terms all that is necessary to constitute the offense, should be overruled.—*Deckard v. State*, 38 Md. 186. [Cited and annotated in 32 L. R. A. (N. S.) 143, on sufficiency of averment in indictment or information for perjury as to jurisdiction or authority to administer oath.] *Harne v. State*, 39 Md. 552.

(c) Certainty, to a reasonable extent, is an essential ingredient in all pleadings, especially in criminal pleadings, where conviction is followed by penal consequences.—*State v. Nutwell*, 1 Gill 54.

### § 72. Disjunctive or alternative allegations.

#### Cross-References.

Matters to be proved, see post, § 168.  
Preliminary affidavit, see "Criminal Law," § 211.

(a) Under act 1894, c. 232, making it unlawful to gamble on "any trotting race or running race," an indictment charging gambling on a trotting or running race, without specifically alleging the one or the other, is bad for duplicity.—*Stearns v. State*, 81 Md. 341, 32 Atl. 282. (See Code [vol. 3], art. 27, §§ 217-221.)

### § 73. Repugnancy.

#### Cross-References.

Aider by verdict, see post, § 202.  
Ground for demurrer, see post, § 147.  
Objection for purpose of review, see "Criminal Law," § 1032.

### §§ 74-80. Language and form of allegations.

#### Cross-References.

Construction of words and terms, see post, § 117.  
Unnecessary words, see post, §§ 119, 120.  
Preliminary complaint, see "Criminal Law," § 211.  
Term appropriate to particular offenses, see "Rape," § 25; "Threats," § 5.  
*Abbreviations, numerals, and symbols.*

In copy served on accused, see "Criminal Law," § 627.

Preliminary affidavit, see "Criminal Law," § 214.

*Mistakes in writing, grammar, or spelling.*

Duplicity, see post, § 125.

As ground for arrest of judgment, see "Criminal Law," § 970.

### § 81. Designation and description of accused.

#### Cross-References.

Aider by verdict, see post, § 202.  
Amendment of indictment, see post, § 159.  
Hearing on motion to quash for defects, see post, § 140.

Indorsement, see ante, § 8.

Mode of objection for insufficient description, see post, § 133.

Motion to quash for erroneous designation, see post, § 137.

Variance between accusation and proof, see post, § 173.

Variance between preliminary proceedings and accusation, see post, § 122.

Effect of trial of special plea of misnomer by trial jury on right to new trial, see "Criminal Law," § 918.

Idem sonans, see "Names," § 16.

In copy served on accused, see "Criminal Law," § 627.

In preliminary complaint or information, see "Criminal Law," § 211.

In preliminary warrant, see "Criminal Law," § 218.

Objection for purpose of review, see "Criminal Law," § 1032.

Plea in abatement for misnomer, see "Criminal Law," §§ 278, 280.

#### Annotation.

Designation of person by use of initials.—14 L. R. A. 694, note.

(a) Where a party was indicted as a free negress, and the proof was that she was a

slave, it was held that an amendment was unnecessary, but that its having been made did not vitiate the indictment.—*Hammond v. State*, 14 Md. 135.

(b) In an indictment under the act prohibiting licensed retailers from permitting slaves, etc., to remain in their stores overnight, it is sufficient to describe the accused as a licensed retailer.—*Rawlings v. State*, 2 Md. 201.

(c) An indictment was quashed because it did not set forth the estate, degree, or mystery of the defendant.—*State v. Hughes*, 2 H. & McH. 479.

### § 82. Codefendants.

#### Cross-Reference.

Joinder of counts, see post, §§ 127-131.

### § 83. Principals in second degree.

#### Cross-References.

Joinder of parties, see post, § 124.

Variance, see post, § 174.

### § 84. Accessories before the fact.

#### Cross-References.

Duplicity, see post, § 125.

Joinder of counts, see post, §§ 128, 132.

Joinder of parties, see post, § 124.

Variance, see post, § 174.

### § 85. Accessories after the fact.

### § 86. Place of offense.

#### Cross-References.

Aider by verdict, see post, § 202.

Amendment of indictment, see post, § 160.

Omission of technical terms, see ante, § 76.

Restatement in conclusion, see ante, § 32.

Variance between allegations and proof, see post, § 175.

Failure to show as ground for arrest of judgment, see "Criminal Law," § 970.

In prosecutions for particular offenses, see "Gaming," § 89; "Homicide," § 132; "Larceny," § 28.

#### Annotation.

Charge of place in indictment for homicide.—3 L. R. A. (N. S.) 1025, note.

(a) An averment in an indictment that the traverser was late of "A. county, aforesaid," is a sufficient allegation of the state of his residence, the name of the state and county appearing in the venue; and hence it negatives the possibility of his being a nonresident of the state.—*Wright v. State*, 88 Md. 436, 41 Atl. 795.

(b) Where an indictment for erecting and maintaining a nuisance describes the venue

as in Cecil county, and the locality of the alleged nuisance, at the time of taking the inquisition, as at the county aforesaid, and specially sets out in each count the nature of the nuisance, and that it was a common nuisance, as no other county is named in the indictment, no presumption could arise that the offense was committed in any other county, and the indictment has the essential attribute of certainty to a reasonable extent.—*Philadelphia, W. & B. R. Co. v. State*, 20 Md. 157. [Cited and annotated in 53 L. R. A. 900, on prescriptive right to maintain public nuisance.]

(c) Since act 1852, c. 63, was passed, it is no ground for a motion in arrest of judgment that the venue is stated in the margin, instead of in the body of the indictment.—*Wedge v. State*, 12 Md. 232. (See Code 1911 [vol. 3], art. 27, § 496.)

### § 87. Time of offense.

#### Cross-References.

Aider by verdict, see post, § 202.

Amendment of indictment, see post, § 159.

Motion to quash for alleging impossible date, see post, § 137.

Raising question of limitations by demurrer, see post, § 147.

Restatement in conclusion, see ante, § 32.

Time for motion to quash for erroneous statement, see post, § 139.

Variance between allegations and proof, see post, § 176.

In prosecutions for particular offenses, see "Conspiracy," § 43; "Homicide," § 133.

Preliminary complaint, see "Criminal Law," § 211.

#### Annotation.

Charging commission of offense at an impossible date.—2 L. R. A. (N. S.) 251, note.

Charge of time in indictment for homicide.—3 L. R. A. (N. S.) 1020, note.

(a) Where an indictment charged the unlawful sale of intoxicating liquor on Sunday, the 4th day of July, etc., when in fact the 4th day of July fell on Friday, the gist of the offense being the sale on Sunday, the indictment was valid.—*Hoover v. State*, 56 Md. 584.

### § 88. Intent.

#### Cross-References.

Variance, see post, § 177.

In prosecution for particular offenses, see "Arson," § 19; "Burglary," § 19; "Embezzlement," § 27; "False Pretenses," § 27; "Forgery," § 27; "Gaming," § 86; "Homicide," §§ 128, 141; "Larceny," §

29; "Perjury," § 20; "Rape," § 21; "Receiving Stolen Goods," § 7; "Robbery," § 17; "Threats," § 5; "Weapons," § 17; violation of labor laws, see "Master and Servant," § 18.

Preliminary complaint, see "Criminal Law," § 211.

### § 89. Knowledge, notice, and demand.

#### Cross-References.

In prosecutions for particular offenses, see "Obscenity," § 11; "Receiving Stolen Goods," § 7.

### § 90. Matter of inducement.

#### Cross-Reference.

. See post, § 96.

### § 91. Felonious or otherwise unlawful nature of act.

(a) Since the offense of receiving stolen goods is a misdemeanor, it is not necessary, therefore, to allege in the indictment that the property was "feloniously received."—*State v. Hodges*, 55 Md. 127.

(b) It is error to allege of a misdemeanor that it was committed "feloniously."—*Black v. State*, 2 Md. 376.

### §§ 92-96. Act or omission constituting offense.

#### Cross-References.

Variance, see post, § 179.

Conducting pawnshop without authority, see "Pawnbrokers," § 11.

Practicing dentistry or medicine without authority, see "Physicians and Surgeons," § 6.

(a) Where one is charged with a common-law offense, the mere averment that it was done *contra pacem* does not dispense with the necessity of setting out in proper terms the circumstances necessary to constitute the alleged common-law offense.—*State v. Hodges*, 55 Md. 127.

(b) It is only where the act charged in an indictment is not in itself unlawful, but becomes so by other facts connected with it, that the facts in which the illegality consists must be set out.—*Cearfoss v. State*, 42 Md. 403. [Cited and annotated in 15 L. R. A. (N. S.) 431, 432, on constitutionality of provision against giving away liquor, where title only prohibits or regulates sale; in 21 L. R. A. (N. S.) 135, on social treating as offense under liquor law.]

### §§ 97-100. Separate counts.

#### Cross-References.

Conclusion, see ante, § 32.

Effect of dismissal of one count, see post, § 144.

### § 101. Designation of person injured or others.

#### Cross-References.

Amendment of indictment, see post, §§ 159, 160.

Variance between allegations and proof, see post, § 180.

Illegal sale of intoxicating liquors, see "Intoxicating Liquors," § 219.

In prosecutions for particular offenses, see "Assault and Battery," § 76; "False Pretenses," § 28; "Homicide," § 131; "Rape," § 22; "Receiving Stolen Goods," § 7; "Robbery," § 17; "Threats," § 5.

Preliminary complaint, see "Criminal Law," § 211.

Poisoning well, see "Poisons," § 5.

Violation of food laws, see "Food," § 20.

(a) An indictment which charges defendant with committing an assault, without mentioning the name of the person on whom the assault was committed, and then goes on to charge that then and there the said D. was beaten, wounded, etc., is sufficient to inform defendant of the offense with which he is charged, and the party on whom it was committed.—*Harne v. State*, 39 Md. 552.

### § 102. Description of real property.

#### Cross-References.

Description of gambling house in indictment for gambling, see "Gaming," § 89.

In indictment for arson, see "Arson," § 20.

In indictment for burglary, see "Burglary," § 20.

Insufficient description as ground for arrest of judgment, see "Criminal Law," § 970.

### § 103. Description of personal property.

#### Cross-References.

Aider by verdict, see post, § 202.

Amendment of indictment, see post, §§ 159, 160.

Variance between allegations and proof, see post, § 181.

In prosecutions for particular offenses, see "Arson," § 20; "Burglary," § 23; "Embezzlement," § 28; "False Pretenses," § 32; "Gaming," § 87; "Larceny," § 30; "Receiving Stolen Goods," § 7; "Robbery," § 17.

Insufficient description as ground for arrest of judgment, see "Criminal Law," § 970.

### § 104. Quantity or value of personal property.

#### Cross-References.

Variance, see post, § 181.



Failure to show as ground for arrest of judgment, see "Criminal Law," § 970.

In indictments for particular offenses, see "Embezzlement," § 29; "Larceny," § 31; "Receiving Stolen Goods," § 7; "Robbery," § 17.

### § 105. Ownership, possession, or custody.

#### Cross-References.

Aider by verdict, see post, § 202.

Variance, see post, § 182.

Failure to show as ground for arrest of judgment, see "Criminal Law," § 970.

In indictments for particular offenses, see "Arson," § 22; "Burglary," §§ 22, 23; "Embezzlement," §§ 30, 31; "Larceny," §§ 32, 33; "Receiving Stolen Goods," § 7; "Robbery," § 17.

#### Annotation.

May an indictment or information for obtaining money under false pretenses lay ownership in one who was in possession of the property as agent, bailee, etc.—22 L. R. A. (N. S.) 645, note.

May an indictment involving the felonious taking of property lay ownership in one in possession of property as agent, bailee, etc.—21 L. R. A. (N. S.) 311, note.

### § 106. Description of or setting forth written or printed matter.

#### Cross-References.

Aider by verdict, see post, § 202.

Variance, see post, § 183.

Description of or setting forth forged instrument, see "Forgery," § 28.

Description of written instrument obtained by false pretenses, see "False Pretenses," § 33.

### § 107. Statutory offenses.

#### Cross-References.

Conclusion of complaint, see ante, § 54.

Conclusion of indictment, see ante, § 32.

Conviction of lesser offense under charge of greater, see post, § 189.

### § 108.—Reference to or recital of statute.

(a) Act 1817, c. 227, which prohibits licensed retailers in certain counties from permitting free negroes to be in their stores over night, is a public act, and need not be recited at length in an indictment.—*Rawlings v. State*, 2 Md. 201.

### § 109.—Elements and incidents of offense in general.

(a) In charging a statutory offense, nothing can be taken by intendment; but all the facts and circumstances necessary to bring

defendant within the terms of the statute must be alleged.—*Kearney v. State*, 48 Md. 16.

(b) The rule that an indictment under a statute which creates an offense or increases its punishment, must aver the circumstances which constitute the offense or add to the penalties thereof, does not apply to a statute which neither creates an offense nor enhances its penalties, but merely divides a common-law offense into degrees and affixes to each degree its appropriate punishment.—*Davis v. State*, 39 Md. 355. [Cited and annotated in 13 L. R. A. (N. S.) 815, on effect of failure to give accused opportunity to plead; in 21 L. R. A. (N. S.) 2, on conviction of lower or different degree in prosecution for homicide.]

### § 110.—Language of statute.

#### Cross-References.

See post, § 111.

Statutory conclusion to common law indictment, see ante, § 32.

(a) Under Code 1904, art. 27, § 446, an indictment in the words of the statute charging the unlawful disposition of spirituous liquors, fermented liquors, and intoxicating drink was sufficient.—*Curry v. State*, 117 Md. 587, 83 Atl. 1030. (See Code 1911 [vol. 3], art. 27, § 504.)

(b) In a prosecution for "burglary with explosives," under act 1906, p. 946, c. 476, defining the offense, an indictment charging that accused feloniously and burglariously did break and enter a depot, and did attempt to open and did open a certain vault, safe, and other secure place in the depot, by the use of nitroglycerin, dynamite, gunpowder, and other explosives, with intent certain moneys, goods, and chattels in said vault, safe, and other secure place in said depot then and there being, then and there feloniously to steal, take, and carry away, substantially charged the offense in the words of the statute and was sufficient.—*Smith v. State*, 106 Md. 39, 66 Atl. 678; *Matthews v. Same*, Id. (See Code [vol. 3], art. 27, §§ 35, 36.)

(c) An indictment or information which charges in the language of the statute the commission of an offense as therein denounced is, in general, sufficient.—*Stevens v. State*, 89 Md. 669, 43 Atl. 929. [Cited and

annotated in 3 L. R. A. (N. S.) 163, on prohibition of possession of game.]

(d) One who receives stolen goods, knowing them to have been stolen, is guilty of a misdemeanor, though he receives them merely for the purpose of concealment, and without gain to himself; and the indictment need not, therefore, allege that defendant received the goods for the purpose of converting them to his own use.—*State v. Hodges*, 55 Md. 127.

(e) In indictments for offenses created by statute, it is, in general, sufficient to describe the offense in the words of the statute.—*Parkinson v. State*, 14 Md. 184, 74 Am. Dec. 522. [Cited and annotated in 15 L. R. A. 430, on constitutionality of provision against giving away liquor, where title only prohibits or regulates sales.] *Gibson v. State*, 54 Md. 447.

(f) In an indictment under Code 1860, art. 30, § 59, for "keeping a gaming table or other place for gambling," it is not necessary to set forth the particular kind of gaming allowed, nor the particular kind of gaming table kept by accused. It is sufficient to charge the offense in the terms of the statute.—*Wheeler v. State*, 42 Md. 563. (See Code 1911 [vol. 3], art. 27, § 222.)

(g) In an indictment for an offense created by statute, the offense must be described in the words of the statute.—*State v. Elborn*, 27 Md. 483.

(h) Under the construction of act 1826, c. 251, declaring that "it shall be unlawful for any person to have in his possession tickets of any lottery not granted by the state, with intent to sell such ticket," etc., it was held that the word "such" did not refer to the possession, as part of the description of the ticket which it would be unlawful to sell, and that it was not therefore necessary to charge the fact of possession, in an indictment for the sale of such tickets. In an indictment under the said act the ticket should be set out.—*State v. Scribner*, 2 G. & J. 246; *State v. Barker*, Id. (See Code [vol. 3], art. 27, § 499.)

(i) In an indictment upon act 1809, c. 138, for stealing a bank note, it is sufficient if the offense is charged in the language of the statute.—*State v. Cassel*, 2 H. & G. 407. (See Code [vol. 3], art. 27, §§ 287, 502.)

[Cited and annotated in 36 L. R. A. (N. S.) 942, on sufficiency of description of money in larceny indictment.]

### § 111.—Exceptions and provisos.

#### Cross-References.

Preliminary affidavit, see "Criminal Law," § 252.

Violation of liquor laws, see "Intoxicating Liquors," §§ 221, 222.

(a) An indictment for operating a motor vehicle without a license need not state that the automobile driven did not come within a subsequent section of the motor vehicle law, exempting certain classes of motor vehicles used for municipal purposes, etc., as exemptions following general words of prohibition are matters of defense and do not have to be negated.—*Ruggles v. State*, 120 Md. 553, 87 Atl. 1080.

(b) Where, after general words of prohibition in a statute creating an offense, an exception is created in a subsequent clause or section, the exception must be interposed by accused as a defense, and the indictment need not negative the exception by express averment.—*Weber v. State*, 116 Md. 402, 81 Atl. 606.

(c) The clause in Code Pub. Loc. Laws, art. 4, § 658 (Laws 1898, c. 123), title "Baltimore City," imposing a license for the keeping of billiard tables, that the section shall not apply to any billiard table kept for private use, is separate and distinct from the provision requiring a license, and an indictment charging a failure to obtain a license need not, by express averment, negative the keeping of tables for private use.—*Weber v. State*, 116 Md. 402, 81 Atl. 606. (See Balto. City Rev. Charter, § 658.)

(d) An exception in a statute, following general words of prohibition, need not be negated in an indictment, but must be interposed by an accused as a matter of defense.—*State v. Knowles*, 90 Md. 646, 45 Atl. 877, 49 L. R. A. 695. [Cited and annotated in 5 L. R. A. (N. S.) 343, on "may" in constitutional or statutory provision as mandatory.]

(e) Where a statute makes it unlawful to gamble on races, except on certain grounds within the state on races run on such grounds, an indictment charging gambling on races run on a track in another state

negatives the exception.—*Stearns v. State*, 81 Md. 341, 32 Atl. 282.

(f) Where a statute contains an exception so incorporated with its enacting clause that the one cannot be read without the other, the rule of pleading is that the indictment must negative the exception; but where, after general words of prohibition, an exception is created in a subsequent clause or section, it must be interposed by the accused as a matter of defense.—*Bode v. State*, 7 Gill 326. [Cited and annotated in 14 L. R. A. (N. S.) 1260, on validity of classification in Sunday law.] *Barber v. State*, 50 Md. 161; *Gibson v. State*, 54 Md. 447.

(g) An indictment for bigamy need not allege either that the prisoner knew at the time of the second marriage that his former wife was living, or that she was not beyond the seas, or had not absented herself continuously for seven years before the second marriage.—*Barber v. State*, 50 Md. 161.

(h) A proviso in the law denouncing abortion, that it shall not apply when a regular physician, after consultation with another, shall be satisfied of the necessity of the abortion, is sufficiently negated in an indictment by alleging that the defendants were not physicians.—*Hays v. State*, 40 Md. 633. [Cited and annotated in 56 L. R. A. 374, on dying declarations as evidence; in 35 L. R. A. (N. S.) 1085, 1087, on admissibility of declarations of one upon whom abortion committed, against others charged with complicity.]

(i) An indictment under act 1809, c. 138, § 5, for burning a building "not parcel of any dwelling house," must negative the exception, since it is included in the enacting part of the statute.—*Kellenbeck v. State*, 10 Md. 431, 69 Am. Dec. 166. (See Code [vol. 3], art. 27, §§ 12, 503.)

(j) Where an offense is defined and the punishment prescribed in the first and second sections of an act, it is not necessary to negative, in an indictment, a proviso or exception contained in a subsequent section.—*Rawlings v. State*, 2 Md. 201.

(k) Where the enacting clause of a penal act contains an exception, it is not indispensable that an indictment framed under it should set forth an express negation of it.—*State v. Price*, 12 G. & J, 260, 37 Am. Dec. 81.

(l) Act 1826, c. 88, denounces the keeping of an E. O. or any other kind of gaming table (billiard tables excepted), etc. Held, that an indictment alleging that defendant kept a faro table need not allege that a faro table is not a billiard table, so as to take it out of the exception in the statute.—*State v. Price*, 12 G. & J. 260, 37 Am. Dec. 81. (See Code [vol. 3], art. 27, §§ 214, 215, 499.)

#### § 112.— Validity as charge of offense at common law.

#### § 113. Matter of aggravation in general.

#### § 114. Previous convictions and habitual criminals.

(a) An indictment, under act 1908, c. 179, § 14, applicable to Baltimore county, for the sale of intoxicating liquors on Sunday after previous conviction, which alleges that the accused was a licensed dealer at the time of the second sale, but fails to show that he was such dealer at the time of the first sale, is defective.—*Kenny v. State*, 121 Md. 120, 87 Atl. 1109. [Cited and annotated in 48 L. R. A. (N. S.) 207, on enhancing penalty for crimes committed by habitual criminals or prior offenders.]

(b) Under act 1908, c. 179, § 14, applicable to Baltimore county, an indictment charging a second violation of that act held to sufficiently allege the prior conviction.—*Hall v. State*, 121 Md. 577, 89 Atl. 111.

#### § 115. Attempts.

##### Cross-References.

Concurrent indictment for offense and for attempt, see ante, § 15.

Attempts to commit particular offenses, see "Arson," § 24; "Burglary," § 26; "Homicide," § 140; "Larceny," § 28; "Rape," § 33; "Robbery," § 18.

#### § 116. Solicitation.

#### § 117. Construction in general.

#### §§ 118-120. Surplusage and unnecessary matter.

##### Cross-References.

Aider by verdict, see post, § 202.

Variance, see post, §§ 171-184.

As ground for arrest of judgment, see "Criminal Law," § 970.

In prosecutions for particular offenses, see "Abortion," § 5; "Arson," § 18; "Burglary," § 20; "Libel and Slander," § 152; "Receiving Stolen Goods," § 7.

(a) An allegation, in an indictment for the second sale of intoxicating liquors on Sunday, that accused had a license to sell under act 1908, c. 179, regulating the sale of liquor in Baltimore county, is not surplusage which can be disregarded in testing the sufficiency of the allegations as to the commission of the first offense.—*Kenny v. State*, 121 Md. 120, 87 Atl. 1109. [Cited and annotated, see supra, § 114.]

(b) Under act 1908, c. 179, § 14, regulating the sale of liquor in Baltimore county, indictment charging a second violation of that act held to sufficiently allege the prior conviction.—*Hall v. State*, 121 Md. 577, 89 Atl. 111.

(c) Where an indictment for perjury in making an affidavit for letters of administration alleged that defendant took the oath in due form of law before the Orphans' Court in the proceeding on an application for administration, a further allegation that the deputy register of wills who administered the oath had authority by law to do so would be either treated as subordinate to or in amplification of the statement as to its due administration, or regarded as surplusage.—*State v. Mercer*, 101 Md. 535, 61 Atl. 220. [Cited and annotated in 32 L. R. A. (N. S.) 146, on sufficiency of averment in indictment or information for perjury as to jurisdiction or authority to administer oath.]

(d) Every fact and circumstance laid in an indictment which is not a necessary ingredient in the offense may be rejected as surplusage; and, if there is any defect in the manner of stating such matter, the defect will not vitiate the indictment.—*Rawlings v. State*, 2 Md. 201.

## § 121. Bill of particulars.

### Cross-References.

Appealability of orders relating to, see "Criminal Law," § 1023.  
Assignment of errors to rulings, see "Criminal Law," § 1129.  
Effect of pendency of appeal from refusal, on other proceedings, see "Criminal Law," § 1083.  
In proceedings for contempt, see "Contempt," § 54.  
Review of discretion of court, see "Criminal Law," § 1149.

## § 122. Variance from preliminary proceedings.

### Cross-References.

Aider by verdict, see post, § 202.  
In summary prosecutions, see "Criminal Law," § 252.  
Objection for purpose of review, see "Criminal Law," § 1032.

## § 123. Aider by preliminary complaint or warrant.

## VI. JOINDER OF PARTIES, OFFENSES, AND COUNTS, Duplicity, AND ELECTION.

### Cross-References.

Mode of raising objections, see post, § 133.  
Variance from preliminary proceedings, see ante, § 122.  
Verdict on indictment containing good and bad counts, see post, § 203.  
Consolidation of indictments at trial, see "Criminal Law," § 619.  
In summary prosecutions, see "Criminal Law," § 252.  
Judicial notice as to offense charged in different counts, see "Criminal Law," § 304.  
Verdict on indictment containing several counts, see "Criminal Law," § 878.

## § 124. Joinder of parties.

### Cross-References.

Dismissal as to one or more, see "Criminal Law," § 302.  
Nol. pros. as to one, see "Criminal Law," § 302.

## § 125. Duplicity.

### Cross-References.

Aider by verdict, see post, § 202.  
Waiver of objections, see post, § 154.  
Ground for arrest of judgment, see "Criminal Law," § 970.  
Ground for new trial, see "Criminal Law," § 915.  
Preliminary complaint, see "Criminal Law," § 213.  
Summary prosecutions, see "Criminal Law," §§ 248, 252.

(a) While an indictment cannot charge more than one distinct, substantive offense, it may charge several related acts, which together make up the offense, even though separately they constitute distinct offenses.—*Mohler v. State*, 120 Md. 325, 87 Atl. 671.

(b) An indictment charging a constable with corruptly obtaining money under color of his office is not duplicitous, because it sets forth the various acts committed by him whereby an innocent person was arrested,

convicted, and fined, even though the separate steps constituted distinct offenses.—*Mohler v. State*, 120 Md. 325, 87 Atl. 671.

(c) Two counts of an indictment for criminal conspiracy alleged that accused conspired with another unlawfully and corruptly to influence grand jurors in the discharge of their duty, so as to cause a charge against a certain person to be dismissed; two other counts alleged that the conspiracy was unlawfully and corruptly to endeavor to impede the grand jurors, etc., in the discharge of such duties; another count alleged the conspiracy "unlawfully and corruptly to obstruct due administration of justice in said court in said cause therein and then pending, as aforesaid." The next count was the same, except that it substituted the word "impede" for "obstruct." The count following that was identical with that quoted, except that it alleged the conspiracy unlawfully and corruptly "to endeavor" to obstruct, etc., and other counts were the same as that last referred to, except that they substituted "impede" for "obstruct." *Held*, that, if it was necessary for counts charging the same offense to "apparently" charge different offenses in order not to be bad for duplicity, the language of the several counts was sufficiently varied to obviate such a technical objection.—*Garland v. State*, 112 Md. 83, 75 Atl. 631.

(d) An indictment for larceny is not objectionable for duplicity when it charges, in one count, the stealing of several articles, the property of different owners. Whether the count is double depends on whether it charges more than one larceny, and whether there was more than one larceny, depends on whether there was more than one taking, and not on the number of articles taken, nor on their ownership.—*State v. Warren*, 77 Md. 121, 26 Atl. 500. [Cited and annotated in 42 L. R. A. (N. S.) 968, 972, on stealing property from different owners at same time as distinct offense.]

(e) An indictment which alleges that the defendant carried on an offensive trade "near unto divers roads and streets, and also near unto the dwelling houses of divers

liege inhabitants of the state, there situate and being," sufficiently charges a public nuisance, and the words "roads" and "streets" are equivalent to public roads and highways.—*Horner v. State*, 49 Md. 277.

## § 126. Joinder of courts.

### Cross-References.

- Aider by verdict, see post, § 203.
- Form of indictment, see ante, § 17.
- Preliminary affidavit, see ante, § 41.
- Application of instructions to issues, see "Criminal Law," § 814.
- Nolle prosequi as to one or more, see "Criminal Law," § 302.
- Preliminary complaint, see "Criminal Law," § 211.
- Sentence on conviction on different counts, see "Criminal Law," § 984.
- Separate trials, see "Criminal Law," § 618.
- Summary prosecutions, see "Criminal Law," § 252.

## § 127.— In general.

### § 128.— Same offense.

(a) It is proper to charge an offense in different ways in several counts of the indictment.—*Toomer v. State*, 112 Md. 235, 76 Atl. 118. [Cited and annotated in 50 L. R. A. (N. S.) 1079, 1082, 1084, as to when confession voluntary.]

(b) Code 1904, art. 27, § 395, makes it a felony to knowingly send or deliver or make, and, for the purpose of being sent or delivered, part with the possession of any writing threatening to injure another's person or property with intent to extort money from him. The first count of the indictment alleged that accused knowingly, etc., sent an unsigned letter to a certain person, threatening to injure his property with a view to extort money from him, setting out the letter; the second count alleged that accused knowingly delivered the letter to such person; the third count alleged that he knowingly made and parted with the possession of the letter for the purpose of being delivered to such person, and the fourth count alleged that he knowingly made and parted with the possession of the letter for the purpose of being sent to such person. *Held*, that each count in the indictment related to the same transaction, and did not charge a distinct offense, so that a motion to quash the

indictment on the ground that they did was properly overruled.—*Toomer v. State*, 112 Md. 285, 76 Atl. 118. (See Code [vol. 8], art. 27, §§ 447-449.) [Cited and annotated, see supra.]

(c) An indictment for stealing wheat contained three counts; the first describing the wheat as the property of the N. Railway Company, the second describing it as the property of the N. Railway Company in its capacity as bailee, and the third alleging it to be the property of M. & Co., the consignees of the wheat. Held, not to charge several distinct felonies.—*State v. McNally*, 55 Md. 559.

(d) Counts under the statute against gaming, and counts for keeping and maintaining such a common gambling house as to constitute a nuisance at the common law, may properly be joined in the same indictment.—*Wheeler v. State*, 42 Md. 563.

(e) A count for a common assault may be joined in the same indictment with a count for a felonious assault if both counts relate to the same transaction.—*Manly v. State*, 7 Md. 135.

(f) A count charging rape may be joined with one charging assault with intent, etc.—*Burk v. State*, 2 H. & J. 426; *State v. Sutton*, 4 Gill 494.

#### § 129.— Different offenses in same transaction.

(a) It is proper to charge two or more felonies growing out of the same transaction in separate counts of an indictment.—*Toomer v. State*, 112 Md. 285, 76 Atl. 118. [Cited and annotated, see supra, § 128.]

#### § 130.— Distinct offenses in general.

(a) Two or more offenses, either felonies or misdemeanors, may be charged in different counts of the same indictment.—*Curry v. State*, 117 Md. 587, 83 Atl. 1030.

(b) An indictment for violation of a local option law, charging in several counts the sale of intoxicating liquors to one person, the giving away of such liquors to another, and the keeping in possession by defendant of such liquors to be used by such other, and with allowing his place of business to be a

depository for such liquors, was not demurrable on the ground that distinct and disconnected criminal charges were improperly joined.—*State v. Blakeney*, 96 Md. 711, 54 Atl. 614.

#### § 131.— Felonies and misdemeanors.

(a) An indictment containing two counts, one charging a felony, and the other a misdemeanor, was held to be good.—*Burk v. State*, 2 H. & J. 426.

#### § 132. Election.

##### Cross-References.

Aider by verdict, see post, § 202.

As to degree of offense, see post, § 189.

Election between acts of accused, proof of which is offered under one count, see "Criminal Law," § 678.

Election to prosecute for lower offense than that for which indictment was found, see post, § 189.

Election to prosecute for act constituting several offenses, see "Criminal Law," § 29.

Exceptions for purpose of review, see "Criminal Law," § 1050.

Necessity of bill of exceptions for purpose of review, see "Criminal Law," § 1090.

Objection for purposes of review, see "Criminal Law," § 1032.

Review of discretion of court, see "Criminal Law," § 1149.

Scope and extent of review in general, see "Criminal Law," § 1134.

(a) Where an indictment charges more than one misdemeanor, the court in its discretion may require the prosecutor to elect upon which he will prosecute or to quash the indictment.—*Curry v. State*, 117 Md. 587, 83 Atl. 1030.

(b) Requiring prosecutor to elect between charges held within court's discretion.—*Curry v. State*, 117 Md. 587, 83 Atl. 1030.

(c) Where several counts in the indictment charge distinct offenses, the court may in its discretion require the state to elect upon which count it will proceed, or quash the indictment for failure to do so; but such course should not be taken at accused's request unless the charges are distinct, so as to mislead accused or confuse the jury.—*Toomer v. State*, 112 Md. 285, 76 Atl. 118. [Cited and annotated in 50 L. R. A. (N. S.) 1079, 1082, 1084, as to when confession voluntary.]

(d) Where an indictment in several counts alleged several distinct violations of a local option law, it was within the discretion of

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

the trial court to require the state to elect as to which it would rely on, where defendant would be prejudiced by the allowance of a single trial on all the counts.—*State v. Blakeney*, 96 Md. 711, 54 Atl. 614.

(e) Where an indictment charges several distinct felonies, the court may, in its discretion, either compel the prosecutor to elect upon which he will proceed, or, in a clear case, quash the indictment.—*State v. McNally*, 55 Md. 559.

(f) A motion to require the state's attorney to elect on which of several counts he will proceed to trial is addressed to the discretion of the court.—*State v. Bell*, 27 Md. 675, 92 Am. Dec. 658.

(g) It seems that when several counts are introduced into an indictment solely for the purpose of meeting the evidence as it may transpire, the charges being substantially for the same offense, the court will not compel the prosecutor to elect on which count he will proceed to trial.—*State v. Bell*, 27 Md. 675, 92 Am. Dec. 658.

## VII. MOTION TO QUASH OR DISMISS, AND DEMURRER.

### Cross-References.

- Defects as to term of court or time of filing, see ante, § 7.
- Defects in conclusion, see ante, § 32.
- Defects in formal requisites of information, see ante, §§ 47-53.
- Defects in signature to indictment, see ante, § 33.
- Dismissal of one of several counts, see ante, § 99.
- Mistakes in grammar, writing or spelling, see ante, § 79.
- Omission or defect in indorsement of indictment, see ante, § 34.
- Resubmission on sustaining objection to indictment, see ante, § 15.
- Successive indictments for same offense, see ante, § 15.
- Successive information for same offense, see ante, § 45.
- Sufficiency of evidence and competency of witnesses, see ante, § 10.
- As bar to subsequent prosecution, see "Criminal Law," § 177.
- As part of record on appeal, see "Criminal Law," § 1088.
- Direction of verdict for defect in indictment or information, see "Criminal Law," § 753.
- Effect of invalidity of appointment of prosecuting attorney, see "District and Prosecuting Attorneys," § 2.
- Following state statutes and practice in federal courts, see "Courts," § 337.

Mandamus to compel quashing, see "Mandamus," § 4.

Mandamus to compel vacation of order quashing information, see "Mandamus," § 61.

Necessity of bill of exceptions presenting grounds of review, see "Criminal Law," § 1090.

New proceedings after dismissal or quashing, limitation of prosecution, see "Criminal Law," § 160.

Preliminary complaint or affidavit, see "Criminal Law," § 213.

Rulings on, as ground for new trial, see "Criminal Law," § 915.

## § 133. Mode of making objections in general.

(a) The objection to an indictment that it was amended by the state's attorney with the leave of the court, but without the consent of the grand jury, can only be raised by a motion to quash.—*Watts v. State*, 99 Md. 30, 57 Atl. 542. [Cited and annotated in 18 L. R. A. (N. S.) 790, 819, as to when confession voluntary.]

## § 134. Statutory provisions.

## §§ 135-143. Motion to quash or set aside.

### Cross-References.

Appealability of orders on, see "Criminal Law," § 1023.

Assignment of errors to rulings on, see "Criminal Law," § 1129.

Certiorari as proper mode of review, see "Criminal Law," § 1011.

Effect of quashing indictment on right of accused to discharge for delay in prosecution, see "Criminal Law," § 576.

Error waived in appellate court, see "Criminal Law," § 1178.

Estoppel to allege error, see "Criminal Law," § 1137.

Presence of accused, see "Criminal Law," § 636.

Review of discretion of court, see "Criminal Law," § 1149.

Right of prosecution to review rulings, see "Criminal Law," § 1024.

Scope and extent of review in general, see "Criminal Law," § 1134.

### Grounds.

Failure to indorse witnesses, see ante, § 34.

Insufficiency of evidence or incompetency of witnesses, see ante, § 10.

Record of indictment, see ante, § 11.

### Annotation.

Improper evidence as ground for quashing indictment.—47 L. R. A. (N. S.) 1207, note.

(a) An indictment containing one good count will not be quashed for defects in the other counts; but judgment may be rendered

on the good count.—*Watts v. State*, 99 Md. 30, 57 Atl. 542. [Cited and annotated, see supra, § 133.]

(b) Under Code 1888, art. 27, § 286, which provides that no indictment shall be quashed by reason of any defect or imperfection of matter of form, "nor for any matter or cause which might have been the subject of demurrer to the indictment," a motion to quash is not available if the defect in the indictment can be reached by demurrer.—*State v. Edlavitch*, 77 Md. 144, 26 Atl. 406. (See Code 1911 [vol. 3], art. 27, § 496.)

(c) If a party is indicted in the Circuit Court for one county, and it appears at the trial that the crime was committed in another county, the indictment may be quashed for the purpose of having him indicted and tried in such other county, and the accused be recognized accordingly.—*Parrish v. State*, 14 Md. 238.

#### § 144. Motion to dismiss.

##### Cross-Reference.

Right of prosecution to review, see "Criminal Law," § 1024.

#### §§ 145-154. Demurrer.

##### Cross-References.

Appealability of orders on, see "Criminal Law," § 1023.

Assignment of errors to rulings on, see "Criminal Law," § 1129.

Right of accused to plead and be tried by jury on overruling demurrer, see "Jury," § 29.

Right of prosecution to review rulings, see "Criminal Law," § 1024.

Scope and extent of review in general, see "Criminal Law," § 1134.

(a) A demurrer to an indictment because it was amended after the adjournment of the grand jury by the state's attorney, with the leave of the court, but without the assent of the grand jury, was properly overruled, where the amendment did not appear on the face of the indictment.—*Watts v. State*, 99 Md. 30, 57 Atl. 542. [Cited and annotated, see supra, § 133.]

(b) Where an indictment shows on its face a defect in the selection, drawing, or impaneling of the grand jury, the objection is properly taken by demurrer.—*State v. Vincent*, 91 Md. 718, 47 Atl. 1036, 52 L. R. A. 83,

(c) A statute cannot be held invalid as contravening the power of Congress to regulate

interstate commerce on demurrer to an indictment which, on its face, presents no question of interstate commerce, the case made being a simple sale in the state by one citizen to another of an article whose sale is prohibited by the statute.—*Wright v. State*, 88 Md. 436, 41 Atl. 795.

(d) Code 1888, art. 27, § 288, provides that an indictment for false pretenses need not state the particular pretense intended to be relied on, but that defendant is entitled, on application before trial, to the names of the witnesses, and a statement of the pretenses intended to be given in evidence. *Held*, that a demurrer to the bill of particulars does not lie.—*Jules v. State*, 85 Md. 305, 36 Atl. 1027. (See Code 1911 [vol. 3], art. 27, § 498.) [Cited and annotated in 35 L. R. A. 435, on expression of opinion as fraud; in 7 L. R. A. (N. S.) 279, on effect of coupling future promise with false pretenses.]

(e) Since the passage of act 1852, c. 63, the proper mode of testing the constitutionality of a law under which a party is indicted is by demurrer to the indictment.—*Foots v. State*, 59 Md. 264; *Cowman v. State*, 12 Md. 250. (See Code [vol. 3], art. 27, §§ 495, et seq.)

(f) If an indictment contain two distinct and independent charges for two separate offenses, and the defendant demurs generally, although one of the offenses is not indictable, or is insufficiently alleged, there will be a judgment for the state upon the count which is valid; for the indictment may be good in part although defective in other parts.—*Wheeler v. State*, 42 Md. 563.

(g) The defenses that the act alleged in the indictment is no offense and that the law upon which the indictment is framed is unconstitutional may be raised by demurrer, and under act 1852, c. 63, can be raised in no other way.—*Cowman v. State*, 12 Md. 250. (See Code [vol. 3], art. 27, §§ 495, et seq.)

(h) That the burning alleged was not charged to have been done "maliciously" is a defect which must be taken advantage of by demurrer, being apparent.—*Kellenbeck v. State*, 10 Md. 431, 69 Am. Dec. 166.

(i) Failure to use the technical word "burn" in an indictment for arson must be



taken advantage of by demurrer.—*Cochrane v. State*, 6 Md. 400.

### VIII. AMENDMENT.

#### Cross-References.

Ground for demurrer, see ante, § 147.  
Ground for arrest of judgment, see "Criminal Law," § 970.  
Ground for new trial, see "Criminal Law," § 936.  
In proceedings at new trial, see "Criminal Law," § 965.  
Necessity of rearraignment, see "Criminal Law," § 261.  
Objections for purpose of review, see "Criminal Law," § 1032.  
Of preliminary complaint or affidavit, see "Criminal Law," § 214.  
Reswearing jury after correction as to defendant's name, see "Jury," § 148.

§§ 155-157. (See Analysis.)

#### §§ 158-160. Indictment.

#### Cross-Reference.

Continuance on, see "Criminal Law," § 586.

(a) The name of a person—his Christian as well as surname—in an indictment is, at common law, a matter of substance, which cannot be changed without the consent of the grand jury.—*Watts v. State*, 99 Md. 30, 57 Atl. 542. [Cited and annotated in 18 L. R. A. (N. S.) 790, 819, as to when confession voluntary.]

(b) Code 1888, art. 27, § 284, providing for the amendment of an indictment when the name of any person other than defendant has been erroneously set forth therein, so as to correspond with the proof, only authorizes such an amendment after the jury has been sworn, and does not render valid an amendment before that time made by the state's attorney with leave of the court.—*Watts v. State*, 99 Md. 30, 57 Atl. 542. (See Code 1911 [vol. 3], art. 27, § 494.) [Cited and annotated, see supra.]

(c) An indictment may be amended before trial in a matter of form, and an allegation which is mere surplusage may be stricken out.—*Hawthorn v. State*, 56 Md. 530.

§§ 161-163. (See Analysis.)

### IX. ISSUES, PROOF, AND VARIANCE.

#### Cross-References.

Applicability of instructions to issues, see "Criminal Law," § 814.

Instructions on issues of case, see "Criminal Law," § 770.

Necessity of bill of exceptions presenting grounds of review, see "Criminal Law," § 1090.

Objection for purpose of review, see "Criminal Law," § 1032.

Variance between indictment and copy served on accused, see "Criminal Law," § 627.

Variance between indictment and verdict as ground for arrest of judgment, see "Criminal Law," § 971.

#### In prosecutions for particular offenses.

See "Abortion," § 6; "Adultery," § 8; "Arson," § 25; "Assault and Battery," § 80; "Bigamy," § 5; "Breach of the Peace," § 5; "Bribery," § 7; "Burglary," § 28; "Conspiracy," § 43; "Disorderly House," § 13; "Disturbance of Public Assemblage," § 7; "Embezzlement," § 35; "Embracery," § 4; "Escape," § 9; "Extortion," § 14; "False Personation," § 5; "False Pretenses," § 38; "Forgery," § 34; "Fraud," § 69; "Gaming," § 94; "Homicide," § 142; "Incest," § 11; "Larceny," § 40; "Libel and Slander," § 152; "Lotteries," § 28; "Malicious Mischief," § 5; "Nuisance," § 91; "Obscenity," § 13; "Obstructing Justice," § 12; "Perjury," § 29; "Rape," § 35; "Receiving Stolen Goods," § 7; "Robbery," § 20; "Threats," § 6; "Trespass," § 87; "Unlawful Assembly," § 2. For abandonment of wife by husband, see "Husband and Wife," § 309.  
Obstruction of highway, see "Highways," § 164.  
Offenses of officers and agents of banks, see "Banks and Banking," §§ 85, 257.  
Practicing medicine, dentistry, or surgery without license, see "Physicians and Surgeons," § 6.  
Sending forged telegrams, see "Telegraphs and Telephones," § 79.  
Violation of election laws, see "Elections," § 328.  
Violations of fish laws, see "Fish," § 15.  
Violations of forest laws, see "Woods and Forests," § 12.  
Violations of license laws in general, see "Licenses," § 42.  
Violations of liquor laws, see "Intoxicating Liquors," § 223.  
Violations of regulations relating to articles of food or drink, see "Food," § 20.  
Violations of Sunday laws, see "Sunday," § 29.

#### § 164. Issues in general.

#### Cross-Reference.

Trial on plea to part of counts, see "Criminal Law," § 618.

§§ 165-169. (See Analysis.)

**§§ 170-184. Variance between allegations and proof.**

*Cross-References.*

See "Burglary," § 28; "Criminal Law," § 564; "Homicide," § 142; "Larceny," § 40; "Rape," § 35; "Receiving Stolen Goods," § 7; "Robbery," § 20; "Threats," § 6; "Weapons," § 17.

Variance between accusation and preliminary complaint or warrant, see ante, § 122.

Variance between allegations, see ante, § 73.

Affecting materiality of evidence to authorize continuance, see "Criminal Law," § 595.

Ground for arrest of judgment, see "Criminal Law," § 970.

*Designation and description of accused.*

See "Escape," § 9; "Homicide," § 142; "Perjury," § 29.

Names idem sonans, see "Names," § 16.

Verdict, see "Criminal Law," § 876.

**X. CONVICTION OF OFFENSE INCLUDED IN CHARGE.**

*Cross-References.*

Applicability of instructions to issues, see "Criminal Law," § 814.

Conviction of different offense included in same act as bar to subsequent prosecution, see "Criminal Law," § 200.

Conviction of lesser offense as bar to subsequent prosecution, see "Criminal Law," § 199.

Conviction of lower as acquittal of higher grade or degree of offense charged, see "Criminal Law," § 193½.

Conviction of offense not within jurisdiction of court, see "Criminal Law," § 102.

Instructions as to offenses included in charge, see "Criminal Law," § 795.

Want of jurisdiction to convict of crime included in charge as ground for arrest of judgment, see "Criminal Law," § 968.

**§ 185. Mode or form of accusation in general.**

**§ 186. Constitutional and statutory provisions.**

**§ 187. Sufficiency of charge of greater offense.**

(a) A common-law indictment for murder is sufficient to support a conviction of murder in the first degree under the statute.—*Davis v. State*, 39 Md. 355. [Cited and annotated in 18 L. R. A. (N. S.) 815, on effect of failure to give accused opportunity to plead; in 21 L. R. A. (N. S.) 2, on conviction of lower or different degree in prosecution for homicide.]

**§ 188. Sufficiency of charge of lesser offense.**

**§ 189. Lesser grade or degree of offense charged.**

*Cross-Reference.*

Duplicity in indictment, see ante, § 125.

(a) All acts of felonious homicide may be prosecuted and punished under an indictment for murder, framed as at common law.—*Davis v. State*, 39 Md. 355. [Cited and annotated, see supra, § 187.]

(b) On an indictment for murder generally, as at common law, the prisoner may be found guilty of murder in the second degree.—*Weighorst v. State*, 7 Md. 442. [Cited and annotated in 21 L. R. A. (N. S.) 4, 21, on conviction of lower or different degree in prosecution for homicide.]

**§ 190. Attempt to commit offense charged.**

**§ 191. Different offense included in offense charged.**

*Cross-References.*

Construction of statutes, see ante, § 2.

Ex post facto laws providing that on trial for murder defendant may be convicted of assault in any degree, see "Constitutional Law," § 199.

(a) It is error to allege of a misdemeanor that it was committed "feloniously."—*Black v. State*, 2 Md. 376.

**§ 192. Sufficiency or failure of proof of offense charged.**

*Cross-References.*

Conviction of assault on insufficient corroboration as to assault with intent to rape, see "Rape," § 54.

Conviction of attempt on insufficient corroboration as to rape, see "Rape," § 54.

Sufficiency of evidence to support conviction for assault with intent to rape, see "Rape," § 53.

**XI. WAIVER OF DEFECTS AND OBJECTIONS, AND AID BY VERDICT.**

*Cross-References.*

Waiver by failure to demur, see ante, § 154.

Waiver by failure to move to dismiss, see ante, §§ 143, 144.

**§§ 193-199. (See Analysis.)**

**§§ 200-203. Aider by verdict.***Cross-References.*

Effect on motion for arrest of judgment, see "Criminal Law," § 970.

Necessity of arraignment and plea, see "Criminal Law," § 261.

*Verdict on good and bad counts.*

Ground for arrest of judgment, see "Criminal Law," § 970.

Requisites and sufficiency of verdict on indictment containing several counts, see "Criminal Law," § 788.

(a) Where a demurrer is filed to each count of an indictment, and all but one are improperly overruled, a general verdict of guilty must be set aside, since it is impossible to tell on which count it was rendered, and since, if rendered on all, and one is bad, it cannot be sustained.—*Avirett v. State*, 76 Md. 510, 25 Atl. 676, 987. [Cited and annotated in 28 L. R. A. 198, on qualification of grand jurors.]

(b) If one count in an indictment or information be good, it will be sufficient to sustain a general verdict of guilty, although all the other counts are defective; and judgment may be rendered on the good count.—*Burk v. State*, 2 H. & J. 426; *Manly v. Same*, 7 Md. 135; *Gibson v. Same*, 54 Md. 447.

**INDIFFERENT JURORS.\****Cross-Reference.*

See "Jury," §§ 83-142.

**INDIGENT PERSONS.\****Cross-References.*

See "Paupers."

Burial of indigent soldier, see "Army and Navy," § 53.

Indigent insane persons, see "Insane Persons," §§ 56, 57.

**INDIGNITIES.\****Cross-References.*

Element of damages, see "Damages," § 54; "Carriers," § 382.

Ground for divorce, see "Divorce," § 29.

**INDIRECT EVIDENCE.\****Cross-References.*

See "Criminal Law," § 338; "Evidence," § 100.

**INDIRECT TAXATION.\****Cross-References.*

See "Customs Duties"; "Internal Revenue."

**INDISPENSABLE PARTIES.\****Cross-References.*

See "Parties," §§ 17-20, 28-34.

**INDISPUTABLE PRESUMPTIONS.***Cross-References.*

See "Criminal Law," § 324; "Evidence," §§ 85-87.

**INDISPUTABLE TITLE.\****Cross-Reference.*

See "Vendor and Purchaser," §§ 128-144.

**INDIVISIBLE CONTRACTS.\****Cross-References.*

See "Contracts," § 171; "Sales," § 62; "Vendor and Purchaser," § 55.

Insurance policies, see "Insurance," § 179.

Splitting causes of action, see "Action," § 53; "Judgment," §§ 591-615.

**INDORSEMENT.\****Cross-References.*

Alteration, see "Alteration of Instruments," §§ 5, 8, 24.

Assignment of mortgage by indorsement thereon, see "Mortgages," § 225.

Authority of attorney to indorse checks for collection, see "Attorney and Client," § 98.

Authority of cashier of bank to bind it by indorsement, see "Banks and Banking," § 109.

Authority of national bank to indorse for accommodation, see "Banks and Banking," § 260.

Authority of partner, see "Partnership," § 146.

Authority of president of bank to indorse negotiable paper, see "Banks and Banking," § 109.

Claims of and against indorsers as provable in bankruptcy, see "Bankruptcy," § 316.

Delivery by maker accompanied by words indicating a gift as equivalent to indorsement, see "Bills and Notes," § 65.

Extending payment of notes, see "Bills and Notes," § 137.

Forgery, see "Forgery," §§ 34, 38, 44.

Liability of person receiving payment of check under forged indorsement, see "Banks and Banking," § 147.

Necessity that drawee of check indorse it upon receiving payment, see "Banks and Banking," § 141.

Of bill of lading, see "Carriers," § 56.

Of bill or note, see "Bills and Notes," §§ 176-202, 223-309.

Of bill or note by corporation, see "Corporations," §§ 463-467.

Of bill or note by executor or administrator, see "Executors and Administrators," § 170.

Of bond, see "Bonds," § 83.

Of commitment, see "Criminal Law," § 999.

\*Annotation: Words and Phrases, same title.

Of deed relinquishing rights, see "Deeds," § 180.  
 Of deposition on making return, see "Depositions," §§ 77, 79.  
 Of indictment, see "Indictment and Information," § 34.  
 Of indictment for costs, see "Costs," § 302.  
 Of information, see "Indictment and Information," § 53.  
 Of lease as extension or renewal, see "Landlord and Tenant," § 89.  
 Of levy of attachment, see "Attachment," § 322.  
 Of levy of execution, see "Execution," §§ 138-140.  
 Of money order, see "Post Office," § 18.  
 Of names of witnesses on indictment or information, see "Criminal Law," § 628.  
 Of note after attachment in drawer's hands, see "Attachment," § 175.  
 Of notes as affecting negotiability, see "Bills and Notes," §§ 144, 166, 170, 171.  
 Of oath of school trustee on certificate of election, see "Schools and School Districts," § 53.  
 Of payment on note, see "Bills and Notes," § 433.  
 Of petition for drain, see "Drains," § 28.  
 Of process in action for penalty, see "Penalties," § 29.  
 Of process in general, see "Process," § 42.  
 Of receipt or of record and file marks on instrument recorded, see "Records," § 7.  
 Of satisfaction of execution, see "Execution," § 356.  
 Of waiver of grounds of avoidance or forfeiture on insurance policy, see "Insurance," § 385.  
 Of will or codicil as revocation, see "Wills," § 185.  
 Of writ as security for costs, see "Costs," §§ 126, 138.  
 Of writ by attorney's clerk, see "Attorney and Client," § 29.  
 Of writ for arrest in civil action, see "Arrest," § 33.  
 Of written instrument, as constituting assignment, see "Assignments," §§ 41, 42.  
 On ballots, see "Elections," § 177.  
 Parol or extrinsic evidence of prior or contemporaneous agreements concerning indorsement of bill or note, see "Evidence," §§ 441, 444, 445.  
 Payment of check on unauthorized indorsement, see "Banks and Banking," § 140.  
 Presumption from indorsement of note, see "Bills and Notes," § 496.  
 Proof of execution, see "Evidence," § 370.  
 Proving note in bankruptcy against indorser as bar of action against maker, see "Abatement and Revival," § 43.  
 Use of rubber stamps for indorsing checks for deposit, see "Banks and Banking," § 123.

### INDUCEMENT.\*

#### Cross-References.

In pleading in general, see "Indictment and Information"; "Pleading," § 58.

\*Annotation: Words and Phrases, same title.

Averments in indictment for bigamy, see "Bigamy," § 4.  
 Fraudulent representations, liability for fraud, see "Fraud," §§ 19-24.  
 Fraudulent representations, responsibility for false pretenses, see "False Pretenses," § 9.  
 In procurement of confessions, see "Criminal Law," § 520.

### INDULGENCE.

#### Cross-References.

Consideration for contract in general, see "Contracts," §§ 70-73.  
 Consideration for negotiable instrument, see "Bills and Notes," § 92.  
 Plea of agreement to forbear in action on negotiable instrument, see "Bills and Notes," § 483.  
 To parties primarily liable as discharge of indemnitor, see "Indemnity," § 12.  
 To parties primarily liable as discharge of indorser of bill or note, see "Bills and Notes," §§ 256, 301.  
 To principal as discharge of guarantor, see "Guaranty," §§ 55-57.  
 To principal as discharge of surety, see "Principal and Surety," §§ 103-108.  
 To purchaser of mortgaged premises assuming mortgage as discharge of mortgagor, see "Mortgages," § 283.  
 To maker, consideration for transfer of note as affecting bona fides of purchaser, see "Bills and Notes," § 226.  
 To maker, effect on liability of indorser, see "Bills and Notes," §§ 256, 301.

### INDUSTRIAL SCHOOLS.\*

#### Cross-References.

See "Reformatories."  
 Commitment to as cruel and unusual punishment, see "Criminal Law," § 1213.

### INEBRIATE ASYLUMS.

#### Cross-Reference.

See "Asylums."

### INEBRIATES.\*

#### Cross-Reference.

See "Drunkards."

### INEVITABLE ACCIDENT.\*

#### Cross-References.

Affecting carrier's liability for injury to live stock, see "Carriers," § 215.  
 Affecting liability for demurrage, see "Shipping," § 179.  
 Affecting liability for negligence or default in transmission or delivery of telegram, see "Telegraphs and Telephones," § 50.  
 Affecting liability of agister, see "Animals," § 23.  
 Affecting liability of carrier for delay in transportation of goods, see "Carriers," § 99.

Affecting liability of carrier for injury to passenger, see "Carriers," § 285.  
 Affecting liability of carrier for loss of or injuries to live stock, see "Carriers," § 213.  
 Affecting liability of carrier for loss of or injury to goods, see "Carriers," § 119.  
 Affording defense for breach of promise to marry, see "Breach of Marriage Promise," § 13.  
 As cause of collision of vessels, see "Collision," § 22.  
 As cause of collision with street car, see "Street Railroads," § 102.  
 As proximate cause of injury, see "Negligence," § 63.  
 Excuse for nonperformance of contract, see "Contracts," § 303.  
 Excusing performance of contract of transportation, see "Carriers," § 64.  
 Injuries from electric current, see "Electricity," § 16.  
 Justifying refusal of carrier to receive goods, see "Carriers," § 39.  
 Liability for injuries caused by accidental explosions, see "Explosives," § 8.  
 Liability of railroad company for injuries to property from spread of fire, see "Railroads," § 465.  
 Loss of passenger's baggage, see "Carriers," § 402.

Master's liability for injuries to servant, see "Master and Servant," § 139.  
 Preventing performance of contract of carriage, see "Shipping," § 165.

### INFAMOUS CRIMES.\*

#### *Cross-References.*

See "Criminal Law," §§ 27, 28.  
 Disqualifying for office, see "Officers," § 31.  
 Disqualifying juror, see "Jury," § 45.  
 Disqualifying voter, see "Elections," §§ 87-94.  
 Disqualifying witness, see "Witnesses," §§ 47-49.  
 Ground for divorce, see "Divorce," § 24.

### INFAMOUS PUNISHMENT.\*

#### *Cross-Reference.*

Forfeiture of citizenship, see "Elections," § 90.

### INFANTICIDE.\*

#### *Cross-References.*

Evidence as to corpus delicti, see "Homicide," § 228.  
 Necessity of indictment, see "Indictment and Information," § 3.

## INFANTS.\*

### *Scope-Note.*

[INCLUDES persons not of full age; their rights and disabilities in general; judicial control and protection of their persons and property; and legal proceedings affecting them.

[EXCLUDES matters peculiar to particular personal relations (see "Parent and Child"; "Guardian and Ward"; "Master and Servant"; and other specific heads); marriage of infants (see "Marriage"); testamentary capacity (see "Wills"); competency as witness (see "Witnesses"); effect of disability on running of statute of limitations, (see "Limitation of Actions"); pauper children (see "Paupers"); asylums for orphans and indigent children (see "Asylums"); sale of intoxicating liquors to minors (see "Intoxicating Liquors"); and particular wrongs and offenses of which infants are the subjects (see specific heads).

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

#### I. Disabilities in General.

- § 1. Who are infants.
- § 2. Status in general.
- § 3. What law governs.
- § 4. Constitutional and statutory provisions.
- § 5. Capacity to appoint agent or trustee.
- § 6. Capacity to act as agent or trustee.
- § 7. Eligibility for office or public employment or service.
- § 8. Estoppel to allege infancy.

\*Annotation: Words and Phrases, same title.

**I. Disabilities in General—Continued.**

- § 9. Emancipation by parent.
- § 10. Effect of marriage.
- § 11. Removal of disabilities.

**II. Custody and Protection.**

- § 12. Constitutionality of statutes.
- § 13. Protection of health and morals.
- § 14. Regulation of employment and education.
- § 15. Prevention and punishment of cruelty.
- § 16. Juvenile delinquents and vagrants.
- § 17. Societies and officers.
- § 18. Jurisdiction of courts.
- § 19. Proceedings affecting custody.
- § 20. Criminal prosecutions under laws for protection of children.

**III. Property and Conveyances.**

- § 21. Rights of property in general.
- § 22. Capacity to take and hold property.
- § 23. Capacity to convey.
- § 24. Adverse possession.
- § 25. Contracts for sale of realty.
- § 26. Validity of conveyances.
- § 27. Trusts.
- § 28. Gifts.
- § 29. Estoppel.
- § 30. Ratification.
- § 31. Avoidance.
- § 32. Jurisdiction of courts.
- § 33. — In equity.
- § 34. — Under statutory provisions.
- § 35. Sale and conveyance under statutory authority.
- § 36. Sale, mortgage, or lease under order of court.
- § 37. — In general.
- § 38. — Purposes and grounds.
- § 39. — Proceedings.
- § 40. — Sale.
- § 41. — Title and rights of purchaser.
- § 42. — Deed to purchaser.
- § 43. — Mortgage.
- § 44. — Lease.
- § 45. — Proceeds.

**IV. Contracts.**

- § 46. Capacity to contract.
- § 47. Validity in general.
- § 48. Agreements under seal.
- § 49. Services.
- § 50. Necessaries.
- § 51. Loans and advances.
- § 52. Bills and notes.
- § 53. Students' contracts.

**IV. Contracts—Continued.**

- § 54. Carrying on business.
- § 55. Estoppel in general.
- § 56. False representations as to age.
- § 57. Ratification.
- § 58. Avoidance.

**V. Torts.**

- § 59. Liability in general.
- § 60. Willful injuries.
- § 61. Negligence.
- § 62. False representations.
- § 63. Acts continued after majority.
- § 64. Damages.

**VI. Crimes.**

- § 65. Responsibility in general.
- § 66. Capacity to commit crime.
- § 67. Acts under direction of others.
- § 68. Rights and privileges as to prosecutions.
- § 69. Punishment.

**VII. Actions.**

- § 70. Capacity to sue and be sued in general.
- § 71. Statutory provisions.
- § 72. Rights of action.
- § 73. Jurisdiction and powers of courts.
- § 74. Parties.
- § 75. Joinder or intervention in actions by others.
- § 76. Guardian ad litem or next friend.
- § 77. — In general.
- § 78. — Necessity of appointment.
- § 79. — Time for appointment.
- § 80. — Proceedings for appointment.
- § 81. — Eligibility and qualification.
- § 82. — Termination of authority and appointment of successor.
- § 83. — Compensation and expenses.
- § 84. — Rights and powers.
- § 85. — Duties and liabilities.
- § 86. — Liabilities on bonds.
- § 87. — Failure to procure appointment.
- § 88. Attainment of majority pending action.
- § 89. Process.
- § 90. Appearance and representation by attorney.
- § 91. Pleading.
- § 92. — In general.
- § 93. — Defense of infancy.
- § 94. — Failure to plead infancy.
- § 95. — Effect of admissions as against infant.
- § 96. Depositions.
- § 97. Evidence.
- § 98. — In general.

**VII. Actions—Continued.**

- § 99. — Proof of infancy.
- § 100. — Sufficiency as against infant.
- § 101. Dismissal and nonsuit.
- § 102. Trial.
- § 103. New trial.
- § 104. Judgment.
- § 105. — In general.
- § 106. — Evidence as against infant and record thereof.
- § 107. — On consent, offer, or admission.
- § 108. — By default.
- § 109. — Reservation to infant of day in court.
- § 110. — Opening and vacating in general.
- § 111. — Opening and vacating after attaining majority.
- § 112. — Collateral attack.
- § 113. — Operation and effect.
- § 114. Execution and enforcement of judgment.
- § 115. Appeal and error.
- § 116. Costs and fees.

*Cross-References.*

- |  |   |
|--|---|
| <p>See "Guardian and Ward"; "Parent and Child."</p> <p>Abduction of female infant, see "Abduction."</p> <p>Acquisition of legal settlement, see "Paupers," § 19.</p> <p>Admissions by infants, see "Evidence," § 203; as to age, see "Evidence," § 217.</p> <p>Adoption, see "Adoption."</p> <p>Aggravated assault on infant, see "Assault and Battery," § 54.</p> <p>Allegations as to ownership in indictment for robbery from infant, see "Robbery," § 17.</p> <p>Allowance for support of children from estate of decedent, see "Executors and Administrators," §§ 173-201.</p> <p>Application of fellow-servant rule, see "Master and Servant," § 159.</p> <p>Appointment of administrator for infant decedent, see "Executors and Administrators," § 8.</p> <p>Apprentices, see "Apprentices."</p> <p>As passengers, see "Carriers," §§ 239, 244.</p> <p>Assumption of risk by infant servant, see "Master and Servant," § 218.</p> <p>Bona fide purchaser of infant's note, see "Bills and Notes," § 366.</p> <p>Capacity to petition for grant of license, see "Intoxicating Liquors," § 66.</p> <p>Care required as to children in general, see "Negligence," §§ 7, 39.</p> <p>Care required of carrier as to children, see "Carriers," § 281.</p> <p>Care required of children at railroad crossings, see "Railroads," § 325.</p> <p>Care required of children in street, see "Municipal Corporations," § 804.</p> <p>Care required of children on or near railroad tracks, see "Railroads," § 382.</p> <p>Care required of children on or near street railroad tracks, see "Street Railroads," § 100.</p> | <p>Care required of infant passenger, see "Carriers," § 326.</p> <p>Care required of infant servant, see "Master and Servant," § 230.</p> <p>Care required of master as to infant servant, see "Master and Servant," §§ 91, 153.</p> <p>Care required of railroad company as to children seen at or near crossing, see "Railroads," § 321.</p> <p>Care required of railroad company as to children seen on or near tracks, see "Railroads," § 378.</p> <p>Care required of railroad company as to infant licensees or trespassers in general, see "Railroads," §§ 273½-282.</p> <p>Care required of street railroad company as to children on or near tracks, see "Street Railroads," § 95.</p> <p>Carnal knowledge, see "Rape."</p> <p>Claim against city for injuries to infant, see "Municipal Corporations," § 812.</p> <p>Classification of minors to whom employment certificates may be issued as denial of equal protection of law, see "Constitutional Law," § 238.</p> <p>Commitment when witnesses, see "Witnesses," § 20.</p> <p>Competency as witnesses, see "Witnesses," §§ 40, 45.</p> <p>Continuance of decedent's business, rights of administrator as against minor heirs, see "Executors and Administrators," § 93.</p> <p>Contributory negligence of children, see "Negligence," § 85.</p> <p>Contributory negligence of parent or custodian imputable to child, see "Negligence," §§ 95, 96.</p> <p>Credibility as question for jury, see "Criminal Law," § 742.</p> |
|--|---|



Dangerous machinery as attractions to children, see "Negligence," § 23.  
 Declarations against interest, see "Evidence," § 272.  
 Derivative settlement of infant, see "Paupers," § 20.  
 Disposition of proceeds of tax sale of infant's lands, see "Taxation," § 683.  
 Duty of state to support infant idiots, see "Paupers," § 3.  
 Effect of failure to present claim of infant against decedent's estate, see "Executors and Administrators," § 231.  
 Ejection of infant from train on failure to pay fare of person in his charge, see "Carriers," § 355.  
 Ejection of infant trespasser from street car, see "Carriers," § 361.  
 Ejection to take or renounce provisions of will, see "Wills," § 786.  
 Elements of damage for injuries to infant, see "Damages," § 38.  
 Enlistment in army or navy, see "Army and Navy," § 19.  
 Excessive damages for death of infant, see "Death," § 99.  
 Foreclosure of tax-sale certificate against land of infant, see "Taxation," § 708.  
 Infancy as affecting limitation of actions, see "Limitation of Actions," § 72.  
 Infancy as disqualification to serve as grand juror, see "Grand Jury," § 5.  
 Infancy as excuse for laches, see "Equity," § 76.  
 Infancy of debtor as affecting jurisdiction of bankruptcy court, see "Bankruptcy," § 13.  
 Inheritance from infant, see "Descent and Distribution," § 9.  
 Judicial notice of value of services, see "Evidence," § 18.  
 Jurisdiction of probate courts in general over estate of infants, see "Courts," § 199.  
 Juvenile court act as denying right to speedy trial, see "Criminal Law," § 574.  
 Leading questions to infant witnesses, see "Witnesses," § 243.  
 Leaving copy of process with infant, see "Process," § 79.  
 Liability as stockholder for debts of bank, see "Banks and Banking," § 248.  
 Mode of assessment of property of minor, see "Taxation," § 342.  
 Notice of injuries as condition precedent to action, see "Action," § 11.  
 Notice to minors of proceedings for sale of decedent's real estate, see "Executors and Administrators," § 337.

Payment of bounties to infant, see "Bounties," § 1.  
 Payment of distributive share in estate of decedent, see "Executors and Administrators," § 304.  
 Permitting children under certain age in theaters, see "Theaters and Shows," § 9.  
 Presentation of claim for injuries to infant, see "Municipal Corporations," § 741; "Railroads," § 265.  
 Process, substituted service on infant, see "Process," § 72.  
 Redemption from tax sale, see "Taxation," §§ 696, 697.  
 Reformatories for juvenile delinquents, see "Reformatories."  
 Regulation of hours of work, see "Master and Servant," § 13.  
 Regulations relating to children as class legislation, see "Constitutional Law," § 208.  
 Release by infant as bar to bastardy proceedings, see "Bastards," § 24.  
 Right of action for death of minor, see "Death," § 9.  
 Right to jury trial in proceedings for commitment to industrial schools or reformatories, see "Jury," § 21.  
 Right to trial by jury in prosecution for misdemeanor, see "Jury," § 22.  
 Sale of liquor to minor evidence of other offenses, see "Criminal Law," § 370.  
 Sale of property of infant for taxes, see "Taxation," §§ 582, 632.  
 Sale or gift of intoxicating liquors to minors, see "Intoxicating Liquors," § 159.  
 Sale of pools and book bets with minors, see "Gaming," § 4.  
 Statements in presence of infants as publication of slander, see "Libel and Slander," § 24.  
 Subrogation on payment after termination of disability, see "Subrogation," § 3.  
 Support and education in general, see "Parent and Child," § 3.  
 Tender as prerequisite to right to redeem from tax sale, see "Taxation," § 710.  
 Tender of payment to guardian of infant on redemption from foreclosure of mortgage, see "Mortgages," § 605.  
 Testamentary capacity, see "Wills," § 26.  
 Time of reaching majority for purpose of voting, see "Elections," § 66.  
 Violation of liquor dealer's bond by sale to infants or permitting them to enter and remain in place of business, see "Intoxicating Liquors," § 86.  
 What law governs as to marriage of infants, see "Marriage," § 3.

## I. DISABILITIES IN GENERAL.

### Cross-References.

Pleading infancy, see post, §§ 93, 94.  
 Proof of infancy, see post, § 99.

### § 1. Who are infants.

(a) A legacy was given to a female child, to be paid if she "lives to attain lawful age."

*Held*, that, for the purpose of receiving a legacy, a female attains lawful age at 18.—*McKim v. Handy*, 4 Md. Ch. 228.

### § 2. Status in general.

### § 3. What law governs.

#### Cross-References.

As to contract, see "Contracts," § 2.  
 As to marriage, see "Marriage," § 3.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

(a) The status of a person, as to his infancy or majority is determined by the laws of his domicile, if the status is one recognized by the laws of the forum and there is nothing in its laws to prohibit giving it effect.—*Harding v. Schapiro*, 120 Md. 541, 87 Atl. 951.

§§ 4-7. (See Analysis.)

§ 8. **Estoppel to allege infancy.**

*Cross-Reference.*

Estoppel to allege invalidity of contract, see post, §§ 55, 56.

§ 9. **Emancipation by parent.**

*Cross-References.*

Emancipation of minor child as constituting fraudulent conveyance, see "Fraudulent Conveyances," § 43.

In general, see "Parent and Child," § 16.

§ 10. **Effect of marriage.**

*Cross-References.*

Necessity of guardian ad litem for married infant, see post, § 78.

Effect as to authority of guardian, see "Guardian and Ward," § 21.

*Annotation.*

How far marriage of infant works emancipation.—16 L. R. A. 578; 24 L. R. A. (N. S.) 160, notes.

§ 11. **Removal of disabilities.**

*Cross-Reference.*

Effect on homestead rights, see "Homestead," § 148.

## II. CUSTODY AND PROTECTION.

*Cross-References.*

Abandonment or neglect to support by parent, see "Parent and Child," § 17.

Attack on commitment of infant to reform school in action to recover custody, see "Criminal Law," § 999.

Duty of state to support infant idiots, see "Paupers," § 3.

Effect of marriage of ward, as to authority of guardian, see "Guardian and Ward," § 21.

Habeas corpus to determine right to custody, see "Habeas Corpus," §§ 25, 38; decision of issues, see "Habeas Corpus," § 99; defenses, see "Habeas Corpus," § 35; evidence, see "Habeas Corpus," § 85; of infant enlisted into military service, see "Habeas Corpus," § 16; nature of restraint or detention, see "Habeas Corpus," § 9; scope of inquiry, see "Habeas Corpus," § 93; sufficiency of return, see "Habeas Corpus," § 75; of infant committed to public institution, see "Habeas Corpus," § 17; of infant committed to industrial school, see "Habeas Corpus," § 30; review of commitment to reformatory, see "Habeas Corpus," § 25.

In general, see "Parent and Child," § 2.

Liability for support of pauper children in asylums or reformatories, see "Paupers," § 47.

On divorce of parents, see "Divorce," §§ 289-312½, 323, 324, 332.

Unlawful employment as affecting liability of master for injury to infant servant, see "Master and Servant," § 95.

§ 12. **Constitutionality of statutes.**

*Cross-Reference.*

Regulations relating to children as class legislation, see "Constitutional Law," § 208.

§ 13. **Protection of health and morals.**

*Annotation.*

Denial of custody of child to parent for its well-being.—41 L. R. A. (N. S.) 564, note.

§ 14. **Regulation of employment and education.**

*Cross-References.*

Regulation of hours of work, see "Master and Servant," § 13.

Unlawful employment as affecting liability of master for injury to infant servant, see "Master and Servant," § 95.

§ 15. **Prevention and punishment of cruelty.**

§ 16. **Juvenile delinquents and vagrants.**

*Cross-References.*

Necessity of indictment, see "Indictment and Information," § 2.

Reformatories for juvenile delinquents, see "Reformatories."

*Annotation.*

Criminal liability of children.—36 L. R. A. 196, note.

§ 17. **Societies and officers.**

§ 18. **Jurisdiction of courts.**

*Cross-References.*

Appellate jurisdiction of Supreme Court of United States of controversy involving custody of infant, as affected by amount in controversy, see "Courts," § 388.

In actions for divorce, see "Divorce," § 290.

(a) The power conferred on justices of the peace by Code 1860, art. 78, § 18, to commit to the House of Refuge minors charged with incorrigible or vicious conduct, is not unconstitutional.—*Roth v. House of Refuge*, 31 Md. 329. (See Code 1911 [vol. 3], art. 27, § 589.) [Cited and annotated in 15 L. R. A. 593, on state guardianship of children; in 16 L. R. A. 692, on commitment of minors to reformatories without conviction of crime;

in 18 L. R. A. (N. S.) 888, 889, on restraint on freedom as impairment of child's constitutional rights.]

### § 19. Proceedings affecting custody.

#### Cross-References.

Juvenile court act as denying right to speedy trial, see "Criminal Law," § 574.  
Opening or vacating judgment, see "Judgment," §§ 343, 384.  
Right to jury trial in proceedings for commitment to industrial schools or reformatories, see "Jury," § 21.

### § 20. Criminal prosecutions under laws for protection of children.

#### Cross-References.

Instructions, requests, see "Criminal Law," § 824.  
Preliminary affidavit, see "Criminal Law," § 211.

#### Annotation.

Criminal responsibility for failure to provide child with medical attendance and remedies.—1 B. R. C. 747, note.

## III. PROPERTY AND CONVEYANCES.

#### Cross-References.

Acceptance of deed by guardian, see "Guardian and Ward," § 28.  
Conveyance of rights in public lands, see "Public Lands," § 135.  
Conveyances between parent and child, see "Parent and Child," § 9.  
Custody and control of by parent, see "Parent and Child," § 8.  
Delivery of deed to third person for infant, see "Deeds," § 58.  
Descent of lands of infant dying unmarried or without issue, see "Descent and Distribution," § 15.  
Disposition of proceeds of tax sale of infant's lands, see "Taxation," § 683.  
Election to take or renounce provisions of will, see "Wills," § 786.  
Foreclosure of tax sale certificate against land of infant, see "Taxation," § 708.  
Homestead rights, see "Homestead," §§ 134-153.  
Infancy of some of beneficiaries of will working conversion as affecting reconversion, see "Conversion," § 22.  
Joinder of infant wife in mortgage of homestead, see "Homestead," § 118.  
Mode of assessment of property of minor, see "Taxation," § 242.  
Notice of charge on land in favor of infant to purchaser of property subject, see "Vendor and Purchaser," § 230.  
Notice to minors of proceedings for sale of decedent's real estate, see "Executors and Administrators," § 337.  
Payment of bounties to infant, see "Bounties," § 1.  
Payment of distributive share of estate of decedent, see "Executors and Administrators," § 304.

Presumption of acceptance of conveyance, see "Deeds," § 194.

Property of infant member of partnership passing to assignee in insolvency, see "Insolvency," § 56.

Public lands, see "Public Lands," §§ 30, 135.

Reconversion by infant, see "Conversion," § 22.

Redemption from tax sale, see "Taxation," § 697.

Right to purchase state school land, see "Public Lands," § 173.

Sale of interests in remainder, see "Remainders," § 16.

Sufficiency of title of purchaser of lands sold under power in will as against infant devisees to support contract of sale, see "Vendor and Purchaser," § 129.

Tender as prerequisite to right to redeem from tax sale, see "Taxation," § 710.

Tender of conveyance as condition precedent to action for price of land sold by ancestor, see "Vendor and Purchaser," § 303.

Tender of payment to guardian of infant on redemption from foreclosure of mortgage, see "Mortgages," § 605.

Transfer of minor's property under special act, see "Statutes," § 82.

Validating sale of school land to minor, see "Public Lands," § 173.

Validity of minor's deed as affecting covenant by minor's grantee, see "Covenants," § 93.

### § 21. Rights of property in general.

(a) Certain certificates of city stock belonging to a minor were canceled by the mayor and city council, on forged assignments, without knowledge or privity of the minor or his guardian; new shares being issued to the holders of the certificates canceled. *Held*, that the minor was entitled to an order requiring that the stock be replaced, and that all arrears of interest be paid to his guardian.—*City of Baltimore v. Ketchum*, 57 Md. 23.

### § 22. Capacity to take and hold property.

#### Annotation.

Capacity of child en ventre sa mere to take under devise or bequest to "children," etc.—1 B. R. C. 582, note.

(a) An infant 16 years of age may acknowledge the receipt of her property delivered to her; but an acknowledgment by her of an equivalent for her property will not be countenanced by a Court of Chancery.—*Crapster v. Griffith*, 2 Bland 5.

(b) In cases of intestacy, or where there is no opposing provisions by will, a female

above the age of 16, entitled to property of decedent, can authorize any person merely to receive her estate by a common order, which would be binding on her, so far as any payment or delivery should be made.—*Pottinger's Ex'x v. Stewart*, 3 H. & J. 347.

### § 23. Capacity to convey.

### § 24. Adverse possession.

#### Cross-References.

Effect as to adult co-owners, see "Adverse Possession," § 4.

Infancy as affecting limitations, see "Limitation of Actions," § 72.

### § 25. Contracts for sale of realty.

### § 26. Validity of conveyances.

(a) An infant feme covert, joining with her husband in a mortgage to secure the purchase money of an estate, cannot claim dower as against the mortgagor; and the rule is the same if a third person advanced the purchase money under an agreement that the mortgage should be executed.—*Glenn v. Clark*, 53 Md. 580. [Cited and annotated in 52 L. R. A. (N. S.) 541, 543, on dower in land subject to purchase money mortgage or lien.]

(b) The deed on an infant, purporting to convey lands, operates to transmit the title, and is voidable only, not void.—*Moale v. Buchanan*, 11 G. & J. 314; *Ridgeley v. Crandall*, 4 Md. 435.

(c) A mortgage of a married woman, at the time an infant, is void, and incapable of confirmation after she becomes of age.—*Cronise v. Clark*, 4 Md. Ch. 403.

(d) A female infant, in contemplation of marriage and with the consent of her intended husband, executed a marriage settlement, by which she conveyed her entire estate, real and personal, to a trustee for her separate use during coverture, with power to dispose of the same by deed or will without her husband's concurrence, and, in case she failed to make such disposal, in trust for any child or children she might thereafter have, and their heirs, etc.; but in case she died without leaving a child or children, or descendants of the same, living at the time of her death, then one-half of said estate for the use of her husband and his heirs, and the other half to her own right heirs. She died during minority, leaving an

infant child which survived her but a few days. Held, that she had not capacity so to bind her own real estate, but could so bind her personal estate.—*Levering v. Heighe*, 3 Md. Ch. 365. [Cited and annotated in 12 L. R. A. (N. S.) 1186, on woman's right to disaffirm marriage settlement executed during nonage.]

(e) A settlement by a female infant, in contemplation of marriage, of her entire estate, real and personal, containing provisions beneficial to her, was not void, but voidable.—*Levering v. Heighe*, 3 Md. Ch. 365. [Cited and annotated, see supra.]

(f) There is no doubt of the power of a female infant, by a contract before marriage, to release her distributive share in the personalty of her husband.—*Levering v. Heighe*, 2 Md. Ch. 81. [Cited and annotated in 43 L. R. A. (N. S.) 715, on survival of infant's right to disaffirm contract.]

(g) A female infant, before marriage, can bind her general personal estate by a settlement, because such personalty, on the marriage, becomes the property of the husband.—*Levering v. Heighe*, 2 Md. Ch. 81. [Cited and annotated, see supra.]

(h) An infant feme covert may join with her husband in the demise laid in the declaration in an action of ejectment.—*Weems v. Mackall*, 4 H. & McH. 484, Append.

### § 27. Trusts.

### § 28. Gifts.

### § 29. Estoppel.

#### Cross-Reference.

Estoppel by permitting improvement, see "Estoppel," § 93.

### § 30. Ratification.

(a) An infant's deed of land, executed in pursuance of a fair and equal partition of her deceased father's estate, will not be set aside by a court of equity after the lapse of 40 years, and after she has received and disposed of her share of the estate.—*Amey v. Cockey*, 73 Md. 297, 20 Atl. 1071. [Cited and annotated in 41 L. R. A. 454, on entries in family Bible or other religious book as evidence; in 57 L. R. A. 340, on effect of partition deed.]

(b) Where a tenant by the curtesy sold the land of his minor children, a confirmation of the sale by them on coming of age relates

back to the time of sale, and has the same effect as if they had been of full age and parties to the contract of sale made by their father, and will inure to the benefit of a party entitled under the original vendee.—*Hall v. Jones*, 21 Md. 439; *Jones v. Hall*, Id.

(c) A female infant may give efficiency to a voidable settlement either by an express confirmation after attaining majority or by some act which would make it inequitable in her to impeach it.—*Levering v. Heighe*, 2 Md. Ch. 81. [Cited and annotated, see supra, § 26.]

### § 31. Avoidance.

#### Cross-Reference.

See ante, § 30.

(a) Since an infant is incompetent to make a binding contract, except for necessities, a husband and wife cannot be restrained by injunction from bringing ejectment for land belonging to the wife, on the ground that she, when an infant, gave a bond of conveyance, with security, for the land, conditioned to convey when she became of age.—*Browner v. Franklin*, 4 Gill 463. [Cited and annotated in 26 L. R. A. 180, on return of consideration as essential to disaffirmance of infant's contracts; in 8 L. R. A. (N. S.) 107, on effect on title, of infant's disaffirmance of contract to pay for property purchased.]

(b) The lessor of plaintiff in ejectment died pending the action, and his heirs at law were made parties in his place without objection, and the cause continued several terms, and the plots amended. Held, that it was not competent for defendant to defeat the action by giving evidence that one of the heirs was an infant when she was made a party, and that evidence that she was an infant at the time of the trial would not entitle defendant to a verdict against the other heirs who were of full age.—*James v. Boyd*, 1 H. & G. 1.

### § 32. Jurisdiction of courts.

#### Cross-References.

Power to authorize settlement of suit, see post, § 73.

Concurrent and conflicting jurisdiction of courts of different states, see "Courts," § 514.

Jurisdiction as dependent on situs of property, see "Courts," § 18.

Jurisdiction of probate courts in general over estates of infants, see "Courts," § 199.

### § 33.— In equity.

#### Cross-Reference.

See post, § 34.

(a) Though a Court of Chancery, independent of jurisdiction given by statute, has power, under some circumstances, to sell an infant's land when his interest demands it, it cannot decree such sale where an adult has a part interest in the land.—*Roche v. Waters*, 72 Md. 264, 19 Atl. 535, 7 L. R. A. 533. (See *Same v. Same*, Md. not reported, 18 Atl. 866, for opinion prior to reargument.)

(b) A Court of Chancery, in the exercise of its general jurisdiction over the property of infants, may, upon proper cause shown, decree the extension of an expiring lease of real estate in which such infants are interested as lessors.—*Taylor v. Peabody Heights Co.*, 65 Md. 388, 4 Atl. 886.

(c) Where an undivided interest in property was devised to a daughter and her children then in being or thereafter to be born, chancery had jurisdiction to decree a sale of the interests of the infant children of the devisee in being, on a bill filed by the devisee and such children for partition.—*Dowlin v. Sprecher*, 35 Md. 474. [Cited and annotated in 8 L. R. A. (N. S.) 50, 63, 69, on divestiture of estates of persons not in being.]

### § 34.— Under statutory provisions.

(a) Act 1832, c. 302 (Code 1860, art. 16, § 31), providing that a court of equity, on application by any of the parties interested and on being convinced that a conveyance by an infant feme covert is equitable, expedient, or proper, may confirm such conveyance or lease, does not give the court any power to act after such infant feme covert has attained full age.—*Glenn v. Clark*, 53 Md. 580. (See Code 1911, art. 16, § 43.) [Cited and annotated in 52 L. R. A. (N. S.) 541, 543, on dower in land subject to purchase money mortgage or lien.]

(b) By decree of the County Court made in 1836, certain lands belonging to infants and others were ordered to be sold. The bill, in that case, did not allege that it would be for the interest of the infants, and of the other parties concerned, that the land should be sold, as required by act 1785, c. 72; but

it did contain allegations that the deceased died intestate of such an estate as is described in act 1820, c. 191, and that some of the parties were minors, as required by the latter act; but it contained an inappropriate averment that the land was incapable of division, and a prayer for the appointment of a trustee to sell. The course of procedure adopted by the court subsequent to the filing of the bill did not conform to act 1820. *Held*, that, in an action by the devisees of one who purchased from the trustee without receiving a conveyance from him, the court in the case in which the decree was passed had no jurisdiction under the act of 1785, but had jurisdiction under the act of 1820.—*Tomlinson v. McKaig*, 5 Gill 256. (See Code, art. 16, §§ 137, et seq.; art. 46, §§ 32, et seq.)

(c) The Legislature may authorize the sale of the real estate of a minor when, in the judgment of the Court of Chancery, the interest of the minor will be thereby promoted.—*Dorsey v. Gilbert*, 11 G. & J. 87.

### § 35. Sale and conveyance under statutory authority.

#### Cross-References.

See ante, § 34.

Transfer of minor's property under special act, see "Statutes," § 82.

(a) The validity of a decree for the sale of minors' lands, under Code 1860, art. 16, §§ 36, 37, cannot be attacked on the ground that the petition was filed by only one of the infants, instead of by all, where all of the infants were before the court.—*Mumma v. Brinton*, 77 Md. 197, 26 Atl. 184. (See Code 1911, art. 16, §§ 57, 58.)

(b) Act 1862, c. 156, provides that when any person has a life estate, and others have any interest in property, a court of equity may order a sale of the same at the instance of any party interested, and that all parties, in esse or not, shall be bound. *Held*, that where a guardian ad litem, in an action under said section, did not sign his answer, which he verified and filed, and it was treated as properly drawn, it was a mere irregularity, which did not affect the title of the purchaser.—*Rieman v. Von Kapff*, 76 Md. 417, 25 Atl. 387. (See Code 1911, art. 16, § 228.)

(c) Act 1816, c. 154, as amended prior to 1859, provides that where an infant is entitled to realty, or to a remainder, or reversion therein, the court may, if for the benefit of such infant, decree a sale thereof, but such decree shall not pass except on petition of the guardian or prochain ami of the infant, nor unless the infant be summoned to appear and answer by guardian appointed by the court, and it be proved that the sale will be for his benefit. *Held*, that such sale cannot pass the infant's interest unless it is proved that the sale will be for his benefit.—*Roche v. Waters*, 72 Md. 264, 19 Atl. 535, 7 L. R. A. 533. [See *Same v. Same*, Md. not reported, 18 Atl. 866, for opinion prior to reargument.] (See Code, art. 16, §§ 66, 71.)

(d) A purchaser in good faith under a decree of sale made in accordance with the terms of act 1868, c. 273, authorizing sales of infants' realty, will not be affected by a subsequent reversal of such decree for errors or irregularities in respect to the evidence, or otherwise, provided the court had acquired jurisdiction to pass the decree.—*Newbold v. Schlens*, 66 Md. 585, 9 Atl. 849. (See Code 1911, art. 16, §§ 57-60, 228.) [Cited and annotated in 21 L. R. A. 53, on purchaser at judicial sale as bona fide purchaser.]

(e) A decree for the sale of real estate of infants, under Code 1860, art. 16, § 36, will not be reversed because it did not appear that the two witnesses who, by § 37, were required to testify as to the propriety of making such sale, had failed to state fully at the hearing facts and circumstances in support of their opinions.—*Gregory v. Lenning*, 54 Md. 51. (See Code 1911, art. 16, §§ 57, 58.)

(f) Under act 1845, c. 253, entitled "An act for the relief of John L. Hook, and others, devisees of James Hook, deceased," the jurisdiction was conferred on the court to decree a sale of certain property in the proceedings mentioned, providing they were satisfied by proof that it would be advantageous to infant parties concerned.—*Davis v. Helbig*, 27 Md. 452, 92 Am. Dec. 646.

(g) Under act 1785, c. 72, § 12, relating to the sale of lands incapable of division, a court of equity is authorized to decree a sale

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

of land, where an infant has a joint interest therein or interest in common with any other person or persons, if it shall appear to the court that such sale will be for the advantage and interest of the parties.—*Billingslea v. Baldwin*, 23 Md. 85. (See Code, art. 16, § 137.)

(h) Act 1785, c. 72, act 1816, c. 154, act 1818, cc. 133, 193, and act 1835, c. 380, being in pari materia, are to be construed together. They import that any interest or estate, at law or in equity, in possession or in remainder, belonging to infants, held in common with others or separately, in real estate, may, upon proper application by any of the parties in interest, or prochein amis of the infants, upon the court being satisfied it is for the interest and advantage of the parties, be sold by decree of the court.—*Bolgiano v. Cooke*, 19 Md. 375. (See Code, art. 16, §§ 57, 58, 137.)

(i) Where a petition alleged that a testator, by his will, proved and recorded, devised certain real estate to trustees, for the benefit of his two nieces, for life, with remainder to their children and their heirs; that the trustees named in the will, save two who were discharged, declined serving, and one other was appointed by the court in their stead; that the said real estate was unproductive, and it would be beneficial for the infant children, and for all parties interested, that it should be sold; that one of the nieces and her husband had conveyed their interest to the petitioner, and had no children, and a subsequent petition filed stated that she had died without issue,—these averments were held substantially to embrace all that is required by statute, and show such interests in the parties as authorized the court to decree the lease or sale of the premises if they were satisfied that it was for the interest and advantage of the infants.—*Bolgiano v. Cooke*, 19 Md. 375.

(j) Since it must appear to the chancellor that all the parties interested will be benefited by the sale of property for which application is made, the fact that infant parties are made complainants does not dispense with the necessity of proof in support of the allegation that it will be for their

interest to have the land sold.—*Watson v. Godwin*, 4 Md. Ch. 25.

(k) Where a petition was filed by an alleged guardian and prochein ami of an infant for the sale of her land, on the ground that it would be for her interest and advantage, to which she was not summoned nor made a party, the objection that the record of such a cause is not evidence against her is not one to the jurisdiction of the court, but rests on the broad principle that decrees and judgments are only binding on parties to the proceedings on which they are founded, and those claiming under them.—*Hunter v. Hatton*, 4 Gill 115, 45 Am. Dec. 117.

(l) The act of 1818 in regard to sale of infant's realty is only in conflict with act of 1816 on the same subject in relation to evidence to be adduced to the court to satisfy it that the sales which it is called on to decree would be for the interest and advantage of the infant.—*Hunter v. Hatton*, 4 Gill 115, 45 Am. Dec. 117. (See Code 1911, art. 16, §§ 57, 58.)

(m) Act 1816, in regard to sale of infants' realty, left the court to its ordinary method of obtaining information as to matters of fact; but act 1818, § 2, provided for the issuing of a commission of not less than three discreet and sensible men, freeholders of the county wherein the lands should lie, to determine the necessity or expediency of the sale.—*Hunter v. Hatton*, 4 Gill 115, 45 Am. Dec. 117. (See Code 1911, art. 16, §§ 57, 58.)

(n) Act 1818, c. 133, does not repeal that part of act 1816, c. 154, which requires infants to be made parties to proceedings in respect to sales of their realty when deemed beneficial to their interests.—*Hunter v. Hatton*, 4 Gill 115, 45 Am. Dec. 117. (See Code 1911, art. 16, §§ 57, 58.)

(o) The chancellor is not authorized to decree a sale of infant's interest in land, under the act of 1832, on the ground that it would be for his benefit, unless proof is made of that fact.—*Harris v. Harris*, 6 G. & J. 111. (See Code, art. 16, § 137.)

### §§ 36-45. Sale, mortgage, or lease under order of court.

#### Cross-References.

Apportionment of guardian ad litem, see post, § 78.

Sale of interests in remainder, see "Remainders," § 16.

Sale under order of court as equitable conversion, see "Conversion," § 7.

Sufficiency of title to support contract of sale, see "Vendor and Purchaser," § 129.

#### Annotation.

Title of purchaser at judicial sale of infant's lands as affected by failure to give bond.—21 L. R. A. 41, note.

(a) Where the next friend of several infants employs an attorney, who procures a decree for the sale of real estate belonging to the infants, the attorney is entitled to compensation for his services from the proceeds arising from the sale.—*Senseney v. Repp*, 94 Md. 77, 50 Atl. 416. [Cited and annotated in 44 L. R. A. (N. S.) 413, on infants: liability for legal services.]

(b) Where the trustees for the benefit of a married woman and children born and to be born unintentionally commit a devastavit by purchasing unimproved land, the fact that children are not born in time to be made parties to proceedings in equity for the sale of such land, in order to relieve the trustees and preserve the trust, does not affect the title of the purchaser.—*Seeger v. Hunting*, 78 Md. 54, 26 Atl. 960. [Cited and annotated in 8 L. R. A. (N. S.) 72, on divestiture of estates of persons not in being.]

(c) A purchaser of the land of an infant sold under a decree of a court of equity, who has not participated in any fraud or collusion by which such decree was obtained, or had notice thereof, cannot be affected by proceedings on such ground to reverse or vacate the decree.—*Gregory v. Lenning*, 54 Md. 51.

(d) Real estate was sold under a foreclosure of mortgage, some of the mortgagors being infants. The infant mortgagors excepted to the final ratification of the sale on the ground that they were infants when they joined in executing the mortgage. There was no evidence to show that the infant mortgagors received any portion of the money to secure the payment of which the mortgages were given, or that the mortgages were executed for their benefit. *Held*,

that, in the absence of any evidence that the infant mortgagors were capable of perpetrating or had perpetrated a fraud, the sale ought to be set aside.—*Monumental Bldg. Ass'n v. Herman*, 33 Md. 128. [Cited and annotated in 26 L. R. A. 183, on return of consideration as essential to disaffirmance of infant's contracts; in 57 L. R. A. 679, on infant's liability for torts.]

(e) On the application of a widow to the Court of Chancery to have the real estate of her infant children sold, it appeared that the whole source of revenue to them consisted in such real estate, a farm of two tracts of land, one of which was chiefly valuable because of its furnishing wood for the other, and that the principal tract was incapable of division among the children without loss, because of the improvements upon it of mills and other buildings, all of which, and the whole tract, were liable to great injury from freshets, as it lay upon two streams; and the court decreed a sale of the farm.—*In re Williams*, 3 Bland 186.

(f) Where a trustee was appointed to make sale of the real estate of infants, the court directed that the trustee fix a price to the land, or reserve a bid, or have a by-bidder.—*In re Williams*, 3 Bland 186.

(g) Proceedings in equity filed by a guardian and prochein ami of an infant to sell her lands, to which she was not summoned nor made a party, are not admissible evidence against her or those claiming under her.—*Hunter v. Hatton*, 4 Gill 115, 45 Am. Dec. 117.

(h) It is no objection to the confirmation of a sale of the real estate of a minor that the petition is filed by the purchaser.—*Dorsey v. Gilbert*, 11 G. & J. 87.

## IV. CONTRACTS.

#### Cross-References.

See "Breach of Marriage Promise," § 3.

Rights of action, see post, § 72.

Between parent and child, see "Parent and Child," § 9.

Effect of discharge of infant joint obligor on liability of co-obligor, see "Contracts," § 182.

Infancy of surety as affecting liability of cosureties, see "Principal and Surety," § 8.

Liability as stockholder for debts of bank, see "Banks and Banking," § 248.



Presumption of acceptance of contract beneficial to infant, see "Contracts," § 45.

Selling pools to and booking bets with minors, see "Gaming," § 4.

Specific performance, see "Specific Performance," §§ 6, 33.

What law governs, see "Contracts," § 2.

#### § 46. Capacity to contract.

*Cross-Reference.*

See post, § 47.

*Annotation.*

Infants as lessees.—47 L. R. A. (N. S.) 543, note.

Lack of parent or guardian as enlarging infant's capacity to contract for other than necessities.—36 L. R. A. (N. S.) 57, note.

(a) A bill of sale executed by a female under the age of 21 years, but above the age of 16 years, was held voidable by her on her arrival at the age of 21 years.—*Lowe v. Gist*, 5 H. & J. 106, note.

#### § 47. Validity in general.

(a) The fact that some of the parties to a contract between heirs not to contest a will were infants would not relieve the adults if they knew of such infancy.—*Reichard v. Izer*, 95 Md. 451, 52 Atl. 592. [Cited and annotated in 13 L. R. A. (N. S.) 485, on validity of contract not to contest probate.]

(b) As a general legal proposition the contracts of an infant are not absolutely void, the inclination of the courts being to treat them as merely voidable. Unless the court can see from the contract itself that it would be to the prejudice of the infant it would not be pronounced void but voidable only.—*Ridgeley v. Crandall*, 4 Md. 435.

(c) Some contracts made by infants are binding, such as contracts for necessities. Some are void, and others voidable only, such as contracts as may be for the benefit of the infant. But a contract that a court can see and pronounce to be to the prejudice of the infant, is void.—*Fridge v. State*, 3 G. & J. 103, 20 Am. Dec. 463; *Levering v. Heighe*, 2 Md. Ch. 81. [Cited and annotated in 43 L. R. A. (N. S.) 715, on survival of infant's right to disaffirm contract.]

#### § 48. Agreements under seal.

#### § 49. Services.

*Cross-References.*

Contracts of apprenticeship, see "Apprentices," § 8.

Judicial notice of value of services, see "Evidence," § 18.

Right of parent to wages or earnings of child, see "Parent and Child," § 5.

*Annotation.*

Implied agreement to pay for services rendered by infant relative or member of household.—11 L. R. A. (N. S.) 888, note.

#### § 50. Necessaries.

*Cross-References.*

See ante, § 47.

Question of law or fact, see post, § 102.

*Annotation.*

Infants: liability for legal services.—44 L. R. A. (N. S.) 411, note.

Education or instruction as necessary.—42 L. R. A. (N. S.) 1115, note.

Liability of parent for necessities furnished minor child who is living away from the parent's home.—40 L. R. A. (N. S.) 488, note.

Liability of infant husband for necessities furnished wife while living with him.—65 L. R. A. 550, note.

Bicycles as necessities.—47 L. R. A. 307, note.

Must the plaintiff in an action against an infant for necessities furnished show them actually to have been required.—1 B. R. C. 156, note.

(a) An infant can bind himself or his estate for necessities.—*Levering v. Heighe*, 2 Md. Ch. 81. [Cited and annotated, see supra, § 47.] *Anderson v. Smith*, 33 Md. 465.

(b) An agreement by an infant to work seven years for his support and schooling, and a "horse in addition, if he worked seven years," is for necessities principally, and the addition about the horse will not avoid it.—*Wilhelm v. Hardman*, 13 Md. 140. [Cited and annotated in 15 L. R. A. 212, 213, on infant's right to repudiate contract for services and sue on quantum meruit; in 15 L. R. A. (N. S.) 320, on parol contracts for services performable within a year, though not so intended.]

#### § 51. Loans and advances.

#### § 52. Bills and notes.

*Cross-Reference.*

Enforcement by bona fide purchaser of minor's note, see "Bills and Notes," § 366.

#### § 53. Students' contracts.

#### § 54. Carrying on business.

*Cross-Reference.*

See post, §§ 56, 58.

(a) Where money has been paid by a minor, in consideration of being admitted as a partner in a business, and he does be-

come and remain a partner for a given time, although such business may not have proved profitable, he cannot recover back the money thus paid, unless he was induced to enter into the partnership by fraudulent representations.—*Adams v. Beall*, 67 Md. 53, 8 Atl. 664, 1 Am. St. Rep. 379. [Cited and annotated in 51 L. R. A. (N. S.) 29, on infant's right to disaffirm contract or conveyance before majority.]

(b) An infant partner is not liable individually for the debts of the firm, apart from what he puts into the business, unless he affirms its contracts after reaching majority; neither is he liable for costs upon a bill to dissolve.—*Bush v. Linthicum*, 59 Md. 344.

(c) It seems that, if an infant forms a partnership with an adult, he holds himself forth to the world as not being an infant, and practices a fraud on the world.—*Kemp v. Cook*, 18 Md. 130, 79 Am. Dec. 681.

#### § 55. Estoppel in general.

##### Cross-References.

See post, § 56.

#### § 56. False representations as to age.

##### Cross-References.

See ante, § 54.

Affecting action for death of infant, see "Death," § 21.

##### Annotation.

Estoppel by misrepresentation as to age to plead infancy.—42 L. R. A. (N. S.) 643, note.

Infant's act in inducing another to enter into a contract with him by representing that he is of age as constituting offense of false pretenses.—24 L. R. A. (N. S.) 1101, note.

Estoppel of infant by false representations as to his age.—9 L. R. A. (N. S.) 1117; 16 L. R. A. (N. S.) 672; 19 L. R. A. (N. S.) 1056; 36 L. R. A. (N. S.) 33, notes.

Estoppel of infant by fraud in misrepresenting age.—57 L. R. A. 684; 35 L. R. A. (N. S.) 574, notes.

(a) A plea of infancy to a bill for the dissolution of a partnership is no ground for abating the suit, if it appears upon complainant's motion to reject the plea, that defendant deceived him regarding his age.—*Bush v. Linthicum*, 59 Md. 344.

#### § 57. Ratification.

##### Cross-References.

See post, § 58.

Specific performance of contract after ratification, see "Specific Performance," § 33.

##### Annotation.

Possession after majority as affirmation of lease by infant.—47 L. R. A. (N. S.) 547, note.

New promise after majority.—53 L. R. A. 365, note.

(a) The contract of an infant in relation to personal property may be avoided by him during his minority.—*Adams v. Beall*, 67 Md. 53, 8 Atl. 664, 1 Am. St. Rep. 379. [Cited and annotated, see supra, § 54.]

(b) The appointment of an agent or attorney by an infant being void, the infant cannot, upon arriving at legal age, ratify the acts of such attorney.—*Wainwright v. Wilkinson*, 62 Md. 146.

#### § 58. Avoidance.

##### Cross-References.

See ante, §§ 54-57.

By administrator, see "Executors and Administrators," § 92.

Larceny by retaking property sold, see "Larceny," § 3.

Limitations, see "Limitation of Actions," § 47.

##### Annotation.

Survival of infant's right to disaffirm contract.—43 L. R. A. (N. S.) 714, note.

Right of infant to rescind purchase of corporate stock.—28 L. R. A. (N. S.) 128, note.

Necessity of returning consideration in order to disaffirm infant's contract.—26 L. R. A. 177, note.

Infant's right to repudiate contract for services and sue on quantum meruit.—15 L. R. A. 211, note.

(a) A contract of partnership between an infant and an adult is voidable only and the infant may avoid it, but the adult cannot rescind it.—*Latrobe v. Dietrich*, 114 Md. 8, 78 Atl. 983.

(b) Where an infant and an adult form a partnership, and as partners purchase stock of a corporation, paying a part of the price in money and giving notes for the balance, the adult partner cannot escape liability on the notes because of the infancy of his co-partner, and neither he nor the infant can recover back the money paid simply because of the infancy of the copartner.—*Latrobe v. Dietrich*, 114 Md. 8, 78 Atl. 983.

(c) An infant cannot disaffirm a contract to labor for support, as to the past, and sue on a quantum meruit, allowing his board to be set off.—*Wilhelm v. Hardman*, 13 Md. 140. [Cited and annotated, see supra, § 50.]

(d) An infant contracted to work for his support and schooling. As he enjoyed the consideration for his services as fast as they were rendered, he was not allowed, on breaking off his agreement, to recover what he had paid,—that is, the value of his services,—even on condition of deducting therefrom the consideration he received, the value of his board, etc.—*Wilhelm v. Hardman*, 13 Md. 140. [Cited and annotated, see *supra*, § 50.]

(e) If an infant does not live to ratify or reject a voidable contract made during his minority, it may be set aside by parties who are privies in blood, though not by those who are privies in estate only.—*Levering v. Heighe*, 2 Md. Ch. 81. [Cited and annotated in 43 L. R. A. (N. S.) 715, on survival of infant's right to disaffirm contract.]

## V. TORTS.

### Cross-References.

Right of action, see post, § 72.  
Parents' liability for torts, see "Parent and Child," § 13.

### § 59. Liability in general.

#### Annotation.

General liability of an infant for torts.—57 L. R. A. 673; 35 L. R. A. (N. S.) 574, notes.

### § 60. Willful injuries.

### § 61. Negligence.

#### Cross-References.

Application of fellow servant rule, see "Master and Servant," § 159.  
Assumption of risk by infant servant, see "Master and Servant," § 218.  
Care required as to children in general, see "Negligence," §§ 7, 39.  
Care required of carrier as to children, see "Carriers," § 281.  
Care required of children at railroad crossings, see "Railroads," § 325.  
Care required of children in street, see "Municipal Corporations," § 804.  
Care required of children on or near railroad track, see "Railroads," § 382.  
Care required of children on or near street railroad tracks, see "Street Railroads," § 100.  
Care required of infant passenger, see "Carriers," § 326.  
Care required of infant servant, see "Master and Servant," § 230.  
Care required of master as to infant servant, see "Master and Servant," §§ 61, 153.  
Care required of railroad company as to children seen at or near crossing, see "Railroads," § 320.

Care required of railroad company as to children seen on or near track, see "Railroads," § 378.

Care required of railroad company as to infant licensees or trespassers in general, see "Railroads," §§ 273½-282.

Care required of street railroad company as to children on or near tracks, see "Street Railroads," § 85.

Contributory negligence of children, see "Negligence," § 85.

Contributory negligence of parent or custodian imputable to child, see "Negligence," §§ 95, 96.

Dangerous machinery as attractions to children, see "Negligence," § 43.

### § 62. False representations.

#### Annotation.

Infant's acts in inducing another to enter into contract with him by representing that he is of age as constituting offense of false pretenses.—24 L. R. A. (N. S.) 1101, note.

### § 63. Acts continued after majority.

### § 64. Damages.

## VI. CRIMES.

### Cross-References.

Juvenile delinquents and vagrants, see ante, § 16.

Admissibility of confession by child, see "Criminal Law," § 527.

Consent to crime against nature, see "Sodomy," § 4.

Larceny by retaking property sold, see "Larceny," § 3.

Larceny from infant, custody of property, see "Larceny," § 8.

Liability of person procuring infant to commit larceny, see "Larceny," § 12.

Presumptions as to capacity to commit crime in absence of evidence of age, see "Criminal Law," § 310.

Right to trial by jury in prosecution for misdemeanor, see "Jury," § 22.

Sale of liquor without license, see "Intoxicating Liquors," § 169.

### § 65. Responsibility in general.

#### Annotation.

Criminal liability of children.—36 L. R. A. 196, note.

### §§ 66-69. (See Analysis.)

## VII. ACTIONS.

### Cross-References.

For sale of land, see ante, § 39.

Arrest, see "Arrest," § 8.

Bankruptcy proceedings, see "Bankruptcy," § 13.

Bastardy proceedings, see "Bastards," § 33.

Conclusiveness of decree for sale of land for payment of debts of decedent, see "Executors and Administrators," § 349.

Disability as affecting limitation of actions, see "Limitation of Actions," § 72.  
Disability as excuse for laches, see "Equity," § 76.

Disability ground for abatement of action, see "Abatement and Revival," § 22.  
For death of minor, see "Death," § 9.

Joinder of causes of action, see "Action," § 50.

Limitations of action by minor to recover money lost at gaming, see "Gaming," § 45.

Notice of injuries as condition precedent to actions, see "Action," § 11.

On official bond, see "Officers," § 140.

Persons concluded by stipulation, see "Stipulations," § 17.

Presentation of claim for injuries to infant, see "Municipal Corporations," § 741; "Railroads," § 265.

Proceedings for distribution of decedent's estate, see "Executors and Administrators," § 406.

Protection of interests of infant legatees in suit to construe will, see "Wills," § 706.

Representation of minor heir at accounting by executor, see "Executors and Administrators," § 471.

Tender of conveyance as condition precedent to action for price of land sold by ancestor, see "Vendor and Purchaser," § 303.

§§ 70-72. (See Analysis.)

### § 73. Jurisdiction and powers of courts.

#### Cross-References.

Conflicting jurisdiction, see "Courts," § 478.

Jurisdiction of federal courts as affected by citizenship of guardian ad litem or next friend, see "Courts," § 311; "Removal of Causes," § 32.

(a) It is the duty of a court of equity to see that the rights of infants are not prejudiced or abandoned by the answers of their guardians.—*Berrett v. Oliver*, 7 G. & J. 191. [Cited and annotated in 32 L. R. A. 673, on admissions and waivers by fiduciaries in actions.]

### § 74. Parties.

#### Cross-References.

Effect of dismissal as to infant defendants in suit to enforce mechanic's lien, see "Mechanics' Liens," § 263.

Waiver of objections, see "Parties," § 96.

(a) In a suit for partition and sale of lands to which infants were parties, subsequently amended so as to ask for an exchange of a portion of the lands, the fact that the amended bill was filed by the infants, by their father and next friend, instead of by the next friend of the infants, as required by Code 1860, art. 16, § 44. (Rev. Code 1878,

art. 66, § 23), will not deprive the court of the jurisdiction to make the exchange; the subject-matter and parties already being before the court.—*Ridgeley v. Barton*, 67 Md. xiii, memorandum case, 10 Atl. 148, full report. (See Code 1911, art. 16, § 65.)

(b) A *prochein ami* for an infant plaintiff is not a party to the suit in a technical sense, though he is liable for costs.—*Baltimore & O. R. Co. v. Fitzpatrick*, 36 Md. 619. [Cited and annotated in 3 L. R. A. (N. S.) 72, 73, on attorney's authority to satisfy judgment in minor's favor; in 11 L. R. A. (N. S.) 914, on right to next friend as to judgment recovered for infant.]

(c) The necessity of establishing the case as against an infant party cannot be obviated by making the infant a plaintiff.—*Benson v. Wright*, 4 Md. Ch. 278. [Cited and annotated in 32 L. R. A. 673, on admissions and waivers by fiduciaries in actions.]

(d) A grant adjudged to be canceled and void on a *scire facias* out of chancery will not divest the property of an infant who was not a party to the suit in chancery.—*Digges v. Beale*, 1 H. & McH. 67.

### § 75. Joinder or intervention in actions by others.

### § 76. Guardian ad litem or next friend.

#### Cross-References.

Competency to testify as to transactions with persons since deceased, see "Witnesses," § 139.

In action for sale of real estate of decedent, see "Executors and Administrators," § 356.

In proceedings to sell property of ward, see "Guardian and Ward," § 84.

### § 77.— In general.

(a) An infant may sue, but cannot answer, by next friend. A guardian must be appointed by the court.—*Bush v. Linthicum*, 59 Md. 344.

(b) Where an infant defendant is out of the state, a commission to three persons must be sent to appoint a guardian and take his answer by such guardian.—*Snowden v. Snowden*, 1 Bland 550.

### § 78.— Necessity of appointment.

(a) Under Code 1888, art. 16, § 116, providing for the partition and sale of real estate in which some of the parties having an interest are infants, it is not necessary, be-

fore the sale can be ordered, that the court retain the bill until the appointment of guardians ad litem for the infants.—*Koontz v. Koontz*, 79 Md. 357, 32 Atl. 1054. (See Code 1911, art. 16, § 137.)

(b) A petition for the sale of minors' land was filed by J., one of the infants, by his next friend, alleging that the sale and the investment of the proceeds would be for the benefit of all the infants. All the infants, including J., were made defendants, were duly summoned, and all answered by guardian. Testimony was taken to show that the sale would be for the benefit of the infants, and a decree for the sale was entered. *Held*, under Code 1860, art. 16, § 36, providing that the property of infants may be sold if the sale shall be for their benefit, and § 37, providing that a decree of sale may pass upon the petition of the guardian or next friend of such infants, and the appearance and answer of such infants by guardian, that such decree was valid.—*Mumma v. Brinton*, 77 Md. 197, 26 Atl. 184. (See Code 1911, art. 16, §§ 57, 58.)

(c) Act 1816, c. 154, as amended prior to 1859, provides that where an infant is entitled to realty, or to a remainder or reversion therein, the court may, if for the benefit of such infant, decree a sale thereof; but such decree shall not pass except on petition of the guardian or prochein ami of the infant, or unless the infant be summoned to appear and answer by guardian appointed by the court, and it be proved that the sale will be for his benefit. *Held*, that such sale cannot pass the infant's interest, unless the infant appear and answer by guardian ad litem.—*Roche v. Waters*, 72 Md. 264, 19 Atl. 535, 7 L. R. A. 533. [See *Same v. Same*, Md. not reported, 18 Atl. 866, for opinion prior to reargument.] (See Code 1911, art. 16, §§ 57-66.) [Cited and annotated in 32 L. R. A. 745, on life tenant's duty to pay taxes; in 45 L. R. A. 712, on self-defense by one who began conflict; in 10 L. R. A. (N. S.) 344, as to whether life tenant or remainderman must bear cost of public improvement.]

(d) Act 1816, c. 154, as amended prior to 1859, provides that, where an infant is entitled to real property, or to a remainder, or reversion therein, the court may, if for the benefit of such infant, decree a sale thereof,

but such decree shall not pass except on petition of the guardian or prochein ami of the infant, nor unless the infant be summoned, and appear and answer by guardian appointed by the court, and it be proved that the sale will be for his benefit. *Held*, that such sale cannot pass the infants' interest, where the petition is filed by their prochein ami, unless the infants are summoned as defendants.—*Roche v. Waters*, 72 Md. 264, 19 Atl. 535, 7 L. R. A. 533. [See *Same v. Same*, Md. not reported, 18 Atl. 866, for opinion prior to reargument.] (See Code 1911, art. 16, §§ 57-66.) [Cited and annotated, see supra.]

(e) Code 1860, art. 16, §§ 36, 37, provide that, where property belongs entirely to an infant, no decree shall be passed, unless on petition of the guardian or prochein ami of the infant, and the appearance and answer of such infant by guardian appointed by the court. Section 47 provides that the court shall exercise the powers herein provided in all cases where an infant is seised of a reversion dependent on a life estate, with the assent of the tenant for life. *Held*, that a decree for the sale of property, in which there is a reversion to infants, dependent on a life estate, passed on the petition of the prochein ami and the life tenants, but without the appearance or answer of the infants by a guardian ad litem, or other proper person appointed by the court, is void as to the infants.—*Roche v. Waters*, Md. not reported, 18 Atl. 866, opinion prior to rehearing. [For opinion on rehearing, see *Same v. Same*, 72 Md. 264, 19 Atl. 535, 7 L. R. A. 533.] (See Code 1911, art. 16, §§ 57, 58, 68.)

(f) Minors who are interested with others in lands sought to be sold in partition proceedings under Code 1860, art. 16, § 99, must be joined as complainants by their next friend.—*Downes v. Friel*, 57 Md. 531. (See Code 1911, art. 16, § 137.)

(g) An infant, whether he has a regularly appointed guardian or not, may, in every case sue by his next friend.—*Deford v. State*, 30 Md. 179. [Cited and annotated in 14 L. R. A. 834, on exceptions to employer's non-liability for acts of independent contractor.]

(h) In a suit by and in the name of the state for the use of certain persons, the fact that one of the cestui que uses is of full age does not dispense with the necessity of having a prochein ami to prosecute for the others who are infants.—*Deford v. State*, 30 Md. 179. [Cited and annotated, see supra.]

(i) An infant may sue by prochein ami in trover, although he be under legal guardianship at the time.—*City of Baltimore v. Norman*, 4 Md. 352.

(j) On a creditor's bill against an infant heir and administrator the court appointed a guardian to defend.—*Chapman v. Barnes*, 1 Bland, 552, note (e).

(k) The guardian of an infant, appointed to appear in proceedings for the sale of the infant's realty under act 1818, has the right to be heard and represented in the naming of the commissioners to ascertain the expediency of the sale, in the examination of evidence to be adduced before them, and in the action of the court on the return of the commissioners.—*Hunter v. Hatton*, 4 Gill 115, 45 Am. Dec. 117. (See Code 1911, art. 16, §§ 57, 58.)

(l) An infant, if a resident of the state, must appear by guardian, to be appointed by the court, before the commission, under act 1818, for ascertaining the necessity of selling infant's realty, can rightfully issue.—*Hunter v. Hatton*, 4 Gill 115, 45 Am. Dec. 117. (See Code 1911, art. 16, §§ 57, 58.)

§ 79.—Time for appointment.

§ 80.—Proceedings for appointment.

(a) A guardian will always be appointed to answer for an infant defendant on petition of the infant in his own name.—*Bush v. Linthicum*, 59 Md. 344.

(b) In contemplation of law the prochein ami is admitted by the court to prosecute for the infant, and a formal order of admission is not necessary.—*Deford v. State*, 30 Md. 179. [Cited and annotated, see supra, § 78.]

§ 81.—Eligibility and qualification.

*Annotation.*

Effect of fact that guardian ad litem appointed in proceedings for sale of infant's land was interested in the purchase.—26 L. R. A. (N. S.) 558, note.

§ 82.—Termination of authority and appointment of successor.

(a) A written authority of an infant appointing his next friend to file a caveat to a will held revocable.—*Reichard v. Izer*, 95 Md. 451, 52 Atl. 592. [Cited and annotated in 13 L. R. A. (N. S.) 485, on validity of contract not to contest probate.]

(b) Where the prochein ami of an infant dies during the prosecution of the suit, the court will appoint another.—*Richards v. Swan*, 7 Gill 366. [Cited and annotated in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors.]

§ 83.—Compensation and expenses.

*Cross-References.*

Compensation as item of cost, see "Costs," § 177.

In action to construe will, see "Wills," § 707.

(a) A complainant suing for the construction of a deed of trust and of a will executing a power of appointment conferred by the deed claimed the entire trust estate after his infant children had received under a distribution made in the Orphans' Court of over \$200,000 in bonds registered in their names. He petitioned for the appointment of a guardian ad litem and for the employment of counsel to defend the interests of the children. Counsel was appointed, who performed services in protecting the rights of the children. The court adjudged that the bonds belonged absolutely to complainant, who had failed to use requisite diligence to ascertain his legal rights to the trust fund. Held, that compensation for the attorney was properly charged against the property in controversy.—*De Galard De Brassac v. Winans*, 115 Md. 139, 80 Atl. 730; *De Bearn v. Winans*, Id.

§ 84.—Rights and powers.

*Cross-References.*

Authority to apply for change of venue, see "Venue," § 62.

Exemption from requirement of security on appeal, see "Appeal and Error," § 374.

Power of guardian ad litem in proceedings to sell land of decedent to waive homestead rights of infant, see "Executors and Administrators," § 329.

Sufficiency of signature to compromise agreement, see "Compromise and Settlement," § 5.

**Annotation.**

Right of parent, guardian, or next friend to compromise infant's cause of action for personal injuries.—21 L. R. A. (N. S.) 338, note.

Right of next friend to receive payment of, and satisfy, judgment recovered in behalf of infant.—11 L. R. A. (N. S.) 913, note.

Arbitration of infant's cause of action.—70 L. R. A. 171, note.

Power of guardian ad litem to enter appearance.—32 L. R. A. 683, note.

Control of guardian ad litem or next friend over action.—16 L. R. A. 507, note.

(a) A solicitor appointed by the court to answer for an infant defendant in equity, the infant having been regularly summoned, and ineffectual efforts made to take her testimony, appeared, answered, submitting her rights to the court, entered into a written stipulation with plaintiff's solicitor and the guardian for the infant that the case might be submitted without argument; the testimony to have the same effect as if taken by the examiner after the infant's answer had been filed. *Held*, under the rules of the court, that the guardian for the infant had the right to enter into the agreement.—*Biddinger v. Wiland*, 67 Md. 359, 10 Atl. 202.

(b) A *prochein ami* for an infant plaintiff is considered as an officer of the court specially appointed to look after the interest of the infant, on whose behalf he acts. He may employ an attorney to carry on the suit to judgment, and, in the absence of a regularly constituted guardian for the infant, may receive the money recovered of the defendant, give a sufficient acquittance therefor, and enter satisfaction on the roll.—*Baltimore & O. R. Co. v. Fitzpatrick*, 36 Md. 619. [*Cited and annotated* in 3 L. R. A. (N. S.) 72, 73, on attorney's authority to satisfy judgment in minor's favor; in 11 L. R. A. (N. S.) 914, on right to next friend as to judgment recovered for infant.]

(c) An infant, who had no regularly constituted guardian, brought suit by his next friend and recovered a judgment, which the defendant soon after paid to the attorney of record in the suit, regularly employed as such by the *prochein ami*, on receiving which the attorney entered satisfaction on the judgment. On motion in behalf of the infant to strike out the entry of satisfaction, *held*, that the payment by the defendant to

the attorney of record was a good discharge of the judgment, and that the act of such attorney in receiving the money and entering satisfaction was binding on the infant.—*Baltimore & O. R. Co. v. Fitzpatrick*, 36 Md. 619. [*Cited and annotated*, see *supra*.]

(d) Money recovered by an infant, who has no regular guardian, and who sues by *prochein ami*, may be paid to the *prochein ami* or to the attorney of record regularly employed by him to conduct the suit, and such payment is sufficient to discharge the judgment; but the power of the *prochein ami* or attorney of record to receive and receipt for such money is subordinate to that of a regularly constituted guardian having charge of the infant's estate, and, where there is such a guardian, no one but he, or some person deriving authority from him can legally receive and receipt for money due the ward.—*Baltimore & O. R. Co. v. Fitzpatrick*, 36 Md. 619. [*Cited and annotated*, see *supra*.]

**§ 85.— Duties and liabilities.****§ 86.— Liabilities on bonds.****§ 87.— Failure to procure appointment.****Cross-Reference.**

Ground for new trial, see "New Trial," § 15.

**§ 88. Attainment of majority pending action.****Cross-Reference.**

Failure to substitute infant for next friend as harmless error, see "Appeal and Error," § 1036.

(a) Where an infant, having sued by *prochein ami*, arrives at the age of 21 years, the court may discharge the *prochein ami* and give the complete control of the suit to the infant; but, in so doing, it should enter an equitable order releasing the *prochein ami* from accrued costs and future liability.—*Wainwright v. Wilkinson*, 62 Md. 146.

**§ 89. Process.****Cross-References.**

In partition proceedings, see "Partition," § 51.

In proceedings for probate of will, see "Wills," § 269.

Leaving copy of process with infant, see "Process," § 79.

Necessity of service on infant in proceedings for accounting by trustee, see "Trusts," § 303.

Notice of application for order for sale of lands of decedent, see "Executors and Administrators," § 337.

Probate of will, see "Wills," § 270.

Sufficiency of return of service, see "Process," § 134.

(a) Act 1795, c. 88, did not provide for service against infant heirs by publication, but related to personal service, and permitted an appearance and re-examination within 18 months, so that the first decree was not final. Act 1799, c. 79, permitted service on infants by publication, and put them on the same footing with other defendants, except reserving to them liberty of appearing within 18 months, and it made the first decree final, provided the subpoena was proved to be served. *Held*, that, where publication was had against infants instead of serving a subpoena, it could not be objected that they were not parties, as the complainant might have his choice as to the two modes of procedure.—*Burd v. Greenleaf*, 1 Bland 556, note (h). (See Code, art. 16, §§ 124, 126.)

(b) Under the act of 1818, as well as before that act, the infant interested in a sale of realty, if a resident of the state, must be summoned to answer the petition filed by his guardian or prochein ami.—*Hunter v. Hatton*, 4 Gill 115, 45 Am. Dec. 117. (See Code 1911, art. 16, §§ 57, 58.)

#### § 90. Appearance and representation by attorney.

##### *Cross-Reference.*

In proceedings for probate of will, see "Wills," § 271.

(a) An infant being incapable of appointing an attorney, the latter's dismissal of a suit by the infant would be void.—*Wainwright v. Wilkinson*, 62 Md. 146.

#### § 91. Pleading.

#### § 92.— In general.

(a) In the case of an infant defendant within the state, it is the practice to let a commission go to one commissioner only, and to appoint a guardian, and take the answer of the infant defendant.—*Snowden v. Snowden*, 1 Bland 550.

(b) Where a bill is filed by parties in the

character and capacity of infants, claiming the equitable interposition of the court of chancery in their behalf, the fact of infancy should be alleged.—*Boyd v. Boyd*, 6 G. & J. 25. [Cited and annotated in 15 L. R. A. 635, on letter as will; in 23 L. R. A. (N. S.) 719, on right to require legatee of life interest in money or its equivalent to give security.]

(c) The answer of infant defendants, calling on complainant to prove their bill, puts them to the proof of establishing his charge, and entitles complainant only to a decree on the case made in the bill when proven.—*Robinson v. Townshend*, 3 G. & J. 413.

#### § 93.— Defense of infancy.

##### *Cross-Reference.*

Notice of filing plea of infancy, see "Equity," § 321.

(a) In assumpsit on an open account, proof of infancy may be made under a plea of the general issue.—*Forrestell v. Wood*, 75 Md. xiii, memorandum case, 23 Atl. 133, full report.

(b) Where a bill is filed by parties in the character and capacity of infants claiming the equitable interposition of the court of chancery in their behalf, the fact of infancy is a material allegation, and should be sustained by proof, if not admitted by the answers.—*Boyd v. Boyd*, 6 G. & J. 25. [Cited and annotated, see supra, § 92.]

#### § 94.— Failure to plead infancy.

#### § 95.— Effect of admissions as against infant.

(a) In proceedings for the sale of realty, under act 1785, c. 72, § 12, in which infants are interested, neither the answer of the infants, nor the answer of adult defendants, confessing that it will be for their interest to sell the lands, is evidence to affect the infants.—*Watson v. Godwin*, 4 Md. Ch. 25. (See Code, art. 16, § 137.)

(b) A guardian ad litem for infant defendants cannot admit away any of the substantial rights of the infants, who are always regarded as the wards of the court.—*Benson v. Wright*, 4 Md. Ch. 278. [Cited and annotated in 32 L. R. A. 673, on admissions and waivers by fiduciaries in actions.]



(c) Infants charged as heirs at law, in a bill to reach land in their possession, are not affected by the answer of their guardian; and the facts of their heirship, and that they claim as heirs, must be proved by competent testimony before a decree can pass against them in that capacity.—*Stewart v. Duvall*, 7 G. & J. 179. [Cited and annotated in 32 L. R. A. 673, on admissions and waivers by fiduciaries in actions.]

(d) On the sale of infants' realty by the chancellor, under act 1832, neither the infants' answer to the application, nor the answer of adults, confessing the fact that the sale would be for the infants' benefit, is evidence to charge the infant.—*Harris v. Harris*, 6 G. & J. 111. (See Code, art. 16, § 137.)

### § 96. Depositions.

(a) In an action by a minor brought in the name of the state, the infant, who was upward of 15 years of age, made affidavit for the removal of his cause to another court. *Held*, that the infant could properly make the suggestion and affidavit for removal.—*Albert v. State*, 66 Md. 325, 7 Atl. 697.

### § 97. Evidence.

#### Cross-References.

Judicial notice of value of services, see "Evidence," § 18.

Testimony as to matters occurring after death of party to contract or cause of action, see "Witnesses," § 168.

Testimony as to transactions with children, see "Witnesses," § 164.

Testimony as to transactions with persons since deceased, see "Witnesses," § 144.

Waiver of privilege as to confidential communications, see "Witnesses," § 219.

### § 98.— In general.

(a) A deed without consideration was executed without power of revocation by the grantor within 6 months of her attaining the age of 21 years, by which she settled the corpus of an estate, which she took absolutely under her grandfather's will, in trust for the separate use of the grantor for life, remainder to her issue living at her death, remainder, in the event of her death without issue, in equal moieties to her father absolutely, and to her brother for life, with remainders over; and she appointed her father, who was trustee under her grandfather's will, an absolute trustee thereof.

*Held*, that the gift to the father was prima facie void, and, he being dead, the burden of proof was on the new trustees to show it to have been a free, voluntary, and unbiased act.—*Whitridge v. Whitridge*, 76 Md. 54, 24 Atl. 645. [Cited and annotated in 16 L. R. A. (N. S.) 1093, on independent advice as condition of valid gift inter vivos between parties in confidential relation.]

### § 99.— Proof of infancy.

(a) In a suit to set aside a deed on the ground that it was executed by plaintiff when she was an infant, an entry in the family Bible as to the date of plaintiff's birth, made years after the occurrence of the event, with nothing to show by whom or under what circumstances the entry was made, and a statement as to the date of her birth in a letter written to plaintiff by her deceased aunt in reference to a contemplated litigation, are not sufficient to establish the infancy of plaintiff at the time she executed the deed in question.—*Amey v. Cockey*, 78 Md. 297, 20 Atl. 1071. [Cited and annotated in 41 L. R. A. 454, on entries in family Bible or other religious book as evidence; in 57 L. R. A. 340, on effect of partition deed.]

### § 100.— Sufficiency as against infant.

### § 101. Dismissal and nonsuit.

(a) Under Code 1888, art. 16, § 125, providing that infants may sue by their next friend, subject to such orders as the court may direct for the protection of infants, where an infant 19 years old requested the dismissal of a caveat filed for him by his next friend, the court should have summoned the parties to appear, and, if satisfied that the infant knew what he was doing, the next friend should have been removed, and the caveat dismissed.—*Reichard v. Izer*, 95 Md. 451, 52 Atl. 592. (See Code 1911, art. 16, § 147, Equity Rule 10.) [Cited and annotated in 13 L. R. A. (N. S.) 485, on validity of contract not to contest probate.]

### § 102. Trial.

(a) Code 1860, art. 2, § 1 (Rev. Code 1878, art. 64, § 32), provides that no action for ejectment, waste, etc., shall abate by reason of the death of the parties. Code 1860, art. 75, § 40 (Rev. Code 1878, art. 64, § 102), provides that when, in a suit to recover land, or in which the title is involved, a party to it shall die, and the person to be made a party

in place of the one dying is an infant, such action shall not be tried during such infancy, unless the guardian satisfy the court that the trial would benefit the infant, but the action may be continued during infancy. The defendant in an ejectment suit died, leaving minor heirs, who were made parties, and a guardian ad litem was appointed, who pleaded their infancy in abatement. The plaintiff demurred. *Held*, that art. 2, § 1, and art. 75, § 40, being formerly §§ 1 and 2, respectively, of act 1785, c. 80, and being both re-enacted in the Code of 1860, neither has superiority over the other, and they must be construed as they were in the act of 1785,—the second section as an exception to the first,—and the demurrer was properly overruled, and a continuance during infancy was proper.—*Tise v. Shaw*, 68 Md. 1, 11 Atl. 363, 582. (See Code 1911, art. 75, §§ 25, 64.)

### § 103. New trial.

### § 104. Judgment.

#### *Cross-References.*

Authority of attorney to receive payment, see "Attorney and Client," § 100.

Form of equitable remedy against, see "Judgment," § 454.

### § 105.— In general.

(a) An action was brought for and in the name of an infant, who sued by prochein ami. A judgment having been recovered by plaintiff, the amount thereof was paid by defendant to the attorney of record, who was regularly employed by the prochein ami to conduct the action, and by order of the attorney the judgment was entered "satisfied." At the time of payment there was no regularly constituted guardian of the infant to receive and receipt for the money recovered. *Held*, that the payment was a good discharge of the judgment, and the attorney's act in receiving the money and directing satisfaction of the judgment was binding on the infant plaintiff.—*Baltimore & O. R. Co. v. Fitzpatrick*, 36 Md. 619. [Cited and annotated in 3 L. R. A. (N. S.) 72, 73, on attorney's authority to satisfy judgment in minor's favor; in 11 L. R. A. (N. S.) 914, on right to next friend as to judgment recovered for infant.]

(b) In an action of ejectment against an infant, judgment for possession and costs

must be against the infant.—*Lane v. Gover*, 1 H. & McH. 459.

### §§ 106-109.— (See Analysis.)

### § 110.— Opening and vacating in general.

(a) In a suit for partition and sale of land to which infants were parties, the fact that an amended bill was filed by the infants by their father and next friend, instead of by the next friend, as required by Code 1860, art. 16, § 44, asking for an exchange of a portion of the lands, is not such a defect as will invalidate the proceedings, but, at most, only render them irregular, and a court of equity will not disturb rights honestly acquired thereunder on a bill of review brought 10 years after the decree passed.—*Ridgely v. Barton*, 67 Md. xiii, memorandum case, 10 Atl. 148, full report. (See Code 1911, art. 16, § 65.)

(b) The fact that no day was given infant defendants, after coming of age, to show cause against the decree for the sale of their land, cannot be made available as a ground for the impeachment of the decree by a bill of review.—*Gregory v. Lenning*, 54 Md. 51.

(c) Privies in blood to deceased infant defendants may take advantage of and urge as a ground of objection to a decree against such infants any matter which would be available to the latter were they living.—*Gregory v. Lenning*, 54 Md. 51.

### § 111.— Opening and vacating after attaining majority.

#### *Cross-Reference.*

Rehearing of decree in equity, see "Equity," § 430.

(a) Motion was made to strike out judgment on the ground of the infancy of the applicant at the time of rendition thereof. It was shown that the infant had appeared by attorney at the trial, that he had been aware of the judgment at the time of its rendition, and that between his coming of age and his motion to strike out judgment six years had elapsed. *Held*, that this amounted to such laches as to deprive him of his right to the relief sought.—*Kemp v. Cook*, 18 Md. 130, 79 Am. Dec. 681. [Cited and annotated in 18 L. R. A. 840, on writ of error coram nobis.]

(b) After a decree in a creditor's suit, an infant heir, who obtained her full age three months before the decree was obtained, and who did not show any special grounds to support her application, was not allowed to come in and have the decree opened.—*Tessier v. Wyse*, 3 Bland 28.

(c) A bill was filed against an infant for specific performance of a parol agreement entered into by the ancestor to convey land to his daughter; and, on the answer and agreement of the guardian of the infant, a conveyance was decreed. The infant on his majority petitioned, under act 1773, c. 7, for a reconveyance. *Held*, that the infant might examine the proofs of the decree in the former suit, and resort to any error on its face tending to show that the conveyance should not have been directed. The petitioner was not confined to the former proceedings, but might, by further proceedings, show himself entitled to relief.—*Prutzman v. Pitesell*, 3 H. & J. 77. (See Code, art. 16, § 100.) [Cited and annotated in 82 L. R. A. 672, on admissions and waivers by fiduciaries in actions.]

#### § 112.—Collateral attack.

(a) An irregularity in appointing commissioners to determine whether an infant's land ought to be sold for her advantage before her petition for sale was filed with the clerk, or in the exercise of authority by the commissioners without the issuing of a commission to them, or that they were not freeholders and thus disqualified to act, or the substitution of one purchaser for another at the final ratification of the sale, can only be taken advantage of by the infant aggrieved by them on a rehearing, on a bill of review, or on appeal in the cause in which they are found, since they detract nothing from the validity of the decree when the record of such cause is presented as evidence collaterally.—*Hunter v. Hatton*, 4 Gill 115, 45 Am. Dec. 117.

#### § 113.—Operation and effect.

##### Cross-Reference.

Persons concluded, see "Judgment," § 692.

(a) A bill was filed against an infant for the specific performance of a parol agreement entered into by the ancestor to convey land to his daughter, and on the answer and

agreement of the guardian of the infant a conveyance was decreed. The infant, on her majority, petitioned, under act 1773, c. 7, for a reconveyance. *Held*, that the decree could not be pleaded in bar of the relief prayed.—*Prutzman v. Pitesell*, 3 H. & J. 77. (See Code 1911, art. 16, § 100.) [Cited and annotated, see *supra*, § 111.]

#### § 114. Execution and enforcement of judgment.

(a) A judgment was recovered in April, 1862, against A., and on the 29th of December of the same year a supersedeas judgment, purporting to have been signed by A. B., who was at that time a minor, was filed in the clerk's office. In October, 1863, execution was issued and returned unsatisfied, and no further step was taken until February, 1873, when the death of B. was suggested and a scire facias was issued to revive the judgment. A. at the first trial after service appeared and moved to strike out the judgment against him on an affidavit alleging his infancy, and that when he signed the paper he did not know that it was a judgment; that it was represented to him to be a mere matter of form; that he had never appeared before a justice of the peace, and did not know of the existence of the judgment until the scire facias was served on him. *Held*, that A., having been a minor at the time of the signing of the supersedeas, could avoid it on the ground of infancy.—*Tiernan v. Hammond*, 41 Md. 548.

#### § 115. Appeal and error.

##### Cross-References.

Appeal from justice's court, see "Justices of the Peace," §§ 174, 191.

Exemption from requirement of security on appeal, see "Appeal and Error," § 374.

Reversal as to infant as affecting coparty, see "Appeal and Error," § 1173.

Right to appeal in forma pauperis, see "Appeal and Error," § 389.

(a) According to practice in the Court of Chancery, the issuing and service of a subpoena always precedes the issuing of a commission to take the answer of infants, but a departure from this practice cannot be made the ground for reversal of the decree in the Court of Appeals, though at the proper time and for the appropriate purpose it might

have been made the subject of a motion in the court below.—*Calwell v. Boyer*, 8 G. & J. 136.

### § 116. Costs and fees.

#### Cross-References.

See ante, § 88.

Action or defense in forma pauperis, see "Costs," §§ 128-133.

Security for costs, see "Costs," §§ 105-145.

(a) Although it is too late after verdict to make the objection that an action brought in the name of the state, to the use of the party injured, for damages by reason of the death of a parent, should have been brought by the next friend of the infant plaintiff, yet, where a judgment for plaintiff is reversed on appeal, costs cannot be entered against the infant nor against the state.—*Annapolis, W. & B. R. Co. v. State*, 104 Md. 659, 65 Atl. 434.

(b) Where an infant sues by *prochein ami*, the *prochein ami* is responsible for costs, being the only person who is authorized to prosecute the suit, charged with the duty of employing an attorney, and protecting the interests of the infant.—*Wainwright v. Wilkinson*, 62 Md. 146.

(c) An infant plaintiff is not liable for costs, but the *prochein ami* is.—*Baltimore & O. R. Co. v. Fitzpatrick*, 36 Md. 619. [Cited and annotated, see supra, § 105.]

(d) An infant defendant in an ejectment suit, who has appeared by guardian, and against whom judgment has been rendered for possession and costs, is answerable for the costs, and may be committed under a *ca sa.* issued against him for the costs.—*Lane v. Gover*, 1 H. & McH. 459.

### INFECTIOUS DISEASES.\*

#### Cross-References.

Health regulations, see "Health," §§ 23-25.

Of animals, see "Animals," §§ 23, 29-36.

### INFERENCES.\*

#### Cross-References.

From evidence, see "Evidence," § 595.

From evidence by court as invasion of province of jury, see "Criminal Law," § 759; "Trial," § 188.

From judgment as matters concluded, see "Judgment," § 741.

### INFERIOR COURTS.\*

#### Cross-References.

See "Courts," §§ 159-197; "Criminal Law," §§ 87, 88, 90; "Justices of the Peace."

Appeal in cases originating in inferior courts, see "Appeal and Error," §§ 44, 65.

### INFIDELS.\*

#### Cross-Reference.

Competency as witnesses, see "Witnesses," §§ 44, 45.

### INFIRMARIES.\*

#### Cross-Reference.

See "Hospitals."

### INFIRMITY.\*

#### Cross-References.

See "Drunkards"; "Insane Persons"; "Spendthrifts."

Care required as to persons under disability, see "Carriers," § 281; "Negligence," § 8; "Railroads," §§ 322, 329; "Street Railroads," § 96.

Care required from persons under disability, see "Carriers," § 326; "Municipal Corporations," § 804; "Negligence," §§ 84-88; "Railroads," §§ 325, 382; "Street Railroads," § 100.

Duty of carrier to transport persons under disability, see "Carriers," § 236.

Ground for equitable relief against judgment, see "Judgment," § 438.

Ground for opening default, see "Judgment," § 143.

Ground for vacating judgment, see "Judgment," § 371.

Of party or counsel ground for continuance, see "Continuance," § 12; "Criminal Law," §§ 592, 593.

Of party or counsel ground for new trial, see "New Trial," §§ 85, 86.

Of person insured, see "Insurance," §§ 291, 454.

Of witness ground for taking deposition, see "Depositions," § 13.

### INFLAMMABLE MATERIALS.

#### Cross-Reference.

See "Explosives," § 9.

### INFLUENCE.\*

#### Cross-References.

Undue influence affecting validity of deed, see "Deeds," § 72; of will, see "Wills," §§ 154-166, 332.

### INFORMALITIES.\*

#### Cross-References.

In pleading, see "Pleading," §§ 229-271, 401-437.

In practice, harmless errors, see "Appeal and Error," § 1034.

\*Annotation: Words and Phrases, same title.

**IN FORMA PAUPERIS.***Cross-References.*

Action or defense, see "Costs," §§ 127-133.  
 Appointment of attorney for one suing in forma pauperis, see "Attorney and Client," § 132.  
 Authentication of affidavit taken in other state, see "Affidavits," § 15.  
 Proceedings on appeal, see "Appeal and Error," § 389; "Criminal Law," § 1077.  
 Suits in admiralty, see "Admiralty," § 122.

**INFORMATION.\****Cross-References.*

Criminal accusation, see "Indictment and Information."  
 For contempt of court, see "Contempt," § 54.  
 In proceedings to forfeit charter of corporation, see "Corporations," § 613.  
 In quo warranto proceedings, see "Quo Warranto," § 48.  
 Remand of admiralty cause to allow amendment of information, see "Admiralty," § 119.  
 Source of information justifying suspicion and arrest without warrant, see "Arrest," § 63.  
 To forfeit goods for violation of revenue laws, see "Internal Revenue," § 46.

**INFORMATION AND BELIEF.\****Cross-References.*

Affidavits in general, see "Affidavits," § 3.  
 Affidavit for arrest in civil action, see "Arrest," §§ 23, 27.  
 Affidavits in attachment proceedings, see "Attachment," §§ 97-100.  
 Affidavits in proceedings for contempt, see "Contempt," § 54.  
 Application to vacate judgment, see "Judgment," § 390.  
 Complaint on information and belief as authorizing arrest in civil action, see "Arrest," § 35.  
 Petition of intervention, see "Equity," § 114.  
 Pleadings in action for injunction, see "Injunction," §§ 118, 122.  
 Pleadings in general, see "Pleading," §§ 68, 122.  
 Preliminary affidavit or complaint, see "Criminal Law," § 211.  
 Verification of petition to set aside composition in bankruptcy, see "Bankruptcy," § 386.

**INFORMERS.\****Cross-References.*

See "Indictment and Information," § 8; "Rewards."  
 As accomplices, see "Criminal Law," § 507.  
 Instructions as to credibility as witnesses, see "Criminal Law," § 785.  
 Rights and remedies, see "Fines," § 21; "Forfeitures," § 11; "Penalties," §§ 9, 15.

**INFRINGEMENT.\****Cross-References.*

Action for libel involving infringement of patent, stay pending suit in federal court involving patent, see "Action," § 69.  
 Appealability of decree declaring infringement awarding a perpetual injunction and referring cause for accounting, see "Appeal and Error," § 71.  
 Appealability of decree dismissing case as to certain claims of infringement and granting injunction as to other claims, see "Appeal and Error," § 78.  
 Appealability of order, dismissing bill for infringement of patent as to one claim, and directing accounting as to others, see "Appeal and Error," § 74.  
 Concurrent suits for infringement of same patent, see "Abatement and Revival," § 8.  
 Notes given in settlement of suit for infringement of patent which is invalid, see "Bills and Notes," § 94.  
 Of bridge franchise, see "Bridges," § 15.  
 Of copyright, see "Copyrights," §§ 51-90.  
 Of corporate name, see "Corporations," § 49.  
 Of exemption rights, see "Exemptions," §§ 132-134.  
 Of ferry franchise, see "Ferries," § 19.  
 Of patent, see "Patents," §§ 226-327.  
 Of rights in literary property, see "Literary Property," § 8.  
 Of trade-mark or trade-name, see "Trade-Marks and Trade-Names," §§ 53-66, 79-101.  
 Sufficiency of evidence of assignment of patent to sustain claim to fund for infringement, see "Assignments," § 137.

**INHABITANCY.\****Cross-Reference.*

Of parties, as affecting jurisdiction, see "Abatement and Revival," § 2.

**INHABITANTS.\****Cross-References.*

See "Census"; "Domicile."  
 Local prejudice ground for change of venue, see "Criminal Law," § 126; "Venue," § 50.

**INHERITANCE.\****Cross-References.*

See "Descent and Distribution."  
 By, from or through adopted children, see "Adoption," §§ 21, 22.  
 By, from or through aliens, see "Aliens," §§ 9, 12.  
 By, from or through bastards, see "Bastards," §§ 95-105.  
 By, from or through Indians, see "Indians," § 18.  
 By, from or through slaves, see "Slaves," § 14.  
 Of trade-mark or trade-name, see "Trade-Marks and Trade-Names," § 38.

\*Annotation: Words and Phrases, same title.

Retrospective effect of statutes conferring right of inheritance on adopted children, see "Adoption," § 3.

Use of or failure to use words of inheritance in deed, see "Deeds," §§ 120-136.

Use of or failure to use words of inheritance in will, see "Wills," §§ 590-627.

### INHERITANCE TAX.\*

#### Cross-References.

See "Internal Revenue," § 8; "Taxation," §§ 856-906.

Finality of order of Orphans' Court dismissing motion to quash appeal from appraisal, see "Appeal and Error," § 69.

Payment of inheritance tax by foreigner as condition precedent to right of inheritance, see "Aliens," § 10.

Statute committing to the county court the duty of fixing the value of property inherited or bequeathed as imposing administrative duties on judicial officers, see "Constitutional Law," § 74.

### INITIALS.\*

#### Cross-Reference.

Of names of persons, see "Names," § 6.

### INITIATIVE AND REFERENDUM.

#### Cross-References.

Submission of ordinances to voters, see "Municipal Corporations," § 108.

Submission of statutes to voters, see "Statutes," § 35½.

Suspension of operation of municipal ordinances, see "Municipal Corporations," § 117.

## INJUNCTION.\*

### Scope-Note.

[INCLUDES judicial prohibition to parties in civil actions, by writ, order, or judgment therein, against doing or refraining from doing particular acts or things, granted as provisional, interlocutory, or final relief; nature and scope of the remedy in general; in what cases and for what purposes it is allowed; grounds of injunction and jurisdiction over and proceedings to obtain injunctions; issuance, requisites, and validity of preliminary or temporary injunctions or restraining orders; service and notice thereof; quashing, vacating, or setting aside such writs, orders, etc., and dissolution or discharge thereof, on giving security or bonds for indemnity or otherwise; final or permanent injunctions; award of damages, etc., incident to relief by injunction; violation of injunctions and punishment thereof; liabilities on and enforcement of securities given to obtain, dissolve, discharge, etc., injunctions; and liability of persons other than officers for wrongful procuring, issuance, enforcement, etc., of injunctions.

[EXCLUDES jurisdiction of and proceedings in equity in general (see "Equity"); injunctions in actions involving particular subjects of equitable jurisdiction (see "Partnership"; "Trusts"; and other specific heads), or in actions affecting particular kinds of property (see "Mines and Minerals"; "Waters and Water Courses"; "Patents"; and other specific heads); injunctions merely incident to other remedies (see specific heads), or restraining enforcement of judgments (see "Judgment"); jurisdiction in regard to injunctions of particular courts (see "Courts"); review of decisions relating to injunctions (see "Appeal and Error"); and proceedings in cases of contempt in general (see "Contempt").

[For complete list of matters excluded, see cross-references, post.]

### Analysis.

#### I. Nature and Grounds in General.

##### (A) NATURE AND FORM OF REMEDY.

- § 1. Nature and purpose in general.
- § 2. Constitutional and statutory provisions.
- § 3. Actions and proceedings in aid of which injunction is authorized.
- § 4. Preventive and protective remedy.
- § 5. Mandatory injunction.
- § 6. Common or special injunctions.

\*Annotation: Words and Phrases. same title.

**I. Nature and Grounds in General—Continued.****(A) NATURE AND FORM OF REMEDY—Continued.**

§ 7. Existence of other remedy in general.

§ 8. Successive injunctions.

**(B) GROUNDS OF RELIEF.**

§ 9. Nature and existence of right requiring protection.

§ 10. Existence of adverse right or claim.

§ 11. Actual or anticipated violation of right.

§ 12. Injury sustained or anticipated.

§ 13. Substantial character of right or of injury.

§ 14. Irreparable injury.

§ 15. Inadequacy of remedy at law.

§ 16. — In general.

§ 17. — Recovery of damages.

§ 18. — Insolvency of defendant.

§ 19. Prevention of multiplicity of suits.

§ 20. Defenses or objections to relief.

§ 21. — In general.

§ 22. — Injunction ineffectual or not beneficial.

§ 23. — Injury or inconvenience to defendant.

§ 24. — Injury or inconvenience to public.

**II. Subjects of Protection and Relief.****(A) ACTIONS AND OTHER LEGAL PROCEEDINGS.**

§ 25. Proceedings which may be restrained in general.

§ 26. Commencement and prosecution of civil actions.

§ 27. Particular proceedings or remedies in civil actions.

§ 28. Special proceedings other than actions.

§ 29. Defenses to actions or special proceedings.

§ 30. Discontinuance of action or proceeding.

§ 31. Actions or proceedings in same court.

§ 32. Actions or proceedings in other courts.

§ 33. Actions or proceedings in other states or countries.

**(B) PROPERTY, CONVEYANCES, AND INCUMBRANCES.**

§ 34. Property and rights protected in general.

§ 35. Title or possession to support suit.

§ 36. Title or right in doubt or dispute.

§ 37. Establishment of title or right by action at law.

§ 38. Protection pending litigation as to title or right.

§ 39. Conveyance or disposition in general.

§ 40. Transfer or pledge of corporate stock.

§ 41. Transfer or pledge of instruments or securities for payment of money.

§ 42. Dealing in tickets of carriers.

§ 43. Collection or payment of money.

§ 44. Fraudulent conveyances and transactions.

§ 45. Trespass or other injury to real property.

§ 46. — Trespasses in general.

§ 47. — Claim of right.

§ 48. — Repeated or continuing trespasses.

§ 49. — Permanent occupation or injury.

**II. Subjects of Protection and Relief—Continued.****(B) PROPERTY, CONVEYANCES, AND INCUMBRANCES—Continued.**

- § 50. — Encroachments by buildings or other structures.
- § 51. — Removal of buildings, fences, or other structures.
- § 52. — Cutting or removal of timber.
- § 53. — Destruction or removal of crops.
- § 54. Injury to personal property.
- § 55. Injury to trade or business.
- § 56. Disclosure or use of trade secrets.

**(C) CONTRACTS.**

- § 57. Contracts enforceable in general.
- § 58. Negative or restrictive covenants or stipulations in general.
- § 59. Breaches of contract which may be restrained in general.
- § 60. Contracts for personal services.
- § 61. Contracts in restraint of trade.
- § 62. Covenants as to use of premises.
- § 63. Inducing breach of contract.

**(D) CORPORATE FRANCHISES, MANAGEMENT, AND DEALINGS.**

- § 64. Franchises and rights protected in general.
- § 65. Infringement of corporate franchise or rights.
- § 66. Exercise or misuse of corporate franchise or powers.
- § 67. — In general.
- § 68. — Acts ultra vires.
- § 69. Management of corporate affairs or business.
- § 70. — In general.
- § 71. — Discretion of corporate officers.
- § 72. Disposition of or dealings with corporate property.
- § 73. Infringement or denial of rights of stockholders.

**(E) PUBLIC OFFICERS AND BOARDS AND MUNICIPALITIES.**

- § 74. Officers and official acts which may be restrained in general.
- § 75. State or national boards and officers.
- § 76. County or town boards and officers.
- § 77. Municipalities and municipal officers in general.
- § 78. School boards and officers.
- § 79. Highway boards and officers.
- § 80. Elections and election officers.
- § 81. Appointment or removal of officers.
- § 82. Exercise of office in general.
- § 83. Meetings and proceedings of boards or other bodies.
- § 84. Passage of ordinances or resolutions.
- § 85. Enforcement of statutes, ordinances, or other regulations.
- § 86. Unauthorized or fraudulent improvements or contracts.
- § 87. Issue of bonds or other securities.
- § 88. Payment or other disposition of public money.

**(F) PUBLIC WELFARE, PROPERTY, AND RIGHTS.**

- § 89. Protection of public in general.
- § 90. Public safety and convenience.
- § 91. Disposition of public property.
- § 92. Use of public buildings and other property.



**II. Subjects of Protection and Relief—Continued.****(F) PUBLIC WELFARE, PROPERTY, AND RIGHTS—Continued.**

§ 93. Use of streets and other public places in cities.

**(G) PERSONAL RIGHTS AND DUTIES.**

§ 94. Rights protected in general.

§ 95. Protection from physical injury.

§ 96. Personal privacy.

§ 97. Private writings.

§ 98. Libel and slander.

§ 99. Interference with occupation in general.

§ 100. Publication of black list.

§ 101. Boycotts and other combinations.

**(H) CRIMINAL ACTS, CONSPIRACIES, AND PROSECUTIONS.**

§ 102. Criminal acts in general.

§ 103. Criminal acts affecting rights of property.

§ 104. Criminal conspiracies and combinations.

§ 105. Criminal prosecutions.

**III. Actions for Injunctions.**

§ 106. Nature and form.

§ 107. Rights of action.

§ 108. Conditions precedent.

§ 109. Defenses.

§ 110. Jurisdiction.

§ 111. Venue.

§ 112. Time to sue in general.

§ 113. Limitations and laches.

§ 114. Parties.

§ 115. Process and appearance.

§ 116. Pleading.

§ 117. — Allegations in general.

§ 118. — Bill, complaint, or petition.

§ 119. — Plea or answer and subsequent pleadings.

§ 120. — Demurrer.

§ 121. — Amended and supplemental pleadings.

§ 122. — Verification.

§ 123. — Issues, proof, and variance.

§ 124. Evidence.

§ 125. — Pleadings as evidence.

§ 126. — Presumptions and burden of proof.

§ 127. — Admissibility.

§ 128. — Weight and sufficiency.

§ 129. Dismissal before hearing.

§ 130. Trial or hearing.

§ 131. Reference.

**IV. Proliminary and Interlocutory Injunctions.****(A) GROUNDS AND PROCEEDINGS TO PROCURE.**

§ 132. Nature and scope of provisional remedy.

§ 133. Mandatory injunction.

§ 134. Right to temporary injunction in general.

§ 135. Discretion of court.

**IV. Preliminary and Interlocutory Injunctions—Continued.****(A) GROUNDS AND PROCEEDINGS TO PROCURE—Continued.**

- § 136. Grounds for temporary injunction.
- § 137. Grounds for denial of temporary injunction.
- § 138. Persons who may be restrained.
- § 139. Authority of court or judge.
- § 140. Form and requisites of application in general.
- § 141. Time for application.
- § 142. Parties on application.
- § 143. Notice of application.
- § 144. Use and effect of bill, complaint, or petition.
- § 145. Affidavits or injunction.
- § 146. Use and effect of answer.
- § 147. Counter affidavits and other evidence.
- § 148. Bond or undertaking.
- § 149. Deposit or payment into court.
- § 150. Restraining order pending hearing of application.
- § 151. Scope of inquiry and questions considered.
- § 152. Hearing and determination.
- § 153. Conditions on granting.
- § 154. Conditions on refusing.
- § 155. — Giving security.
- § 156. Order on application.
- § 157. — In general.
- § 158. — Operation and effect.
- § 159. Objections and exceptions.
- § 159½. Costs.

**(B) CONTINUING, MODIFYING, VACATING, OR DISSOLVING.**

- § 160. Right to continuance in general.
- § 161. Discretion of court.
- § 162. Successive applications.
- § 163. Grounds for continuing, modifying, vacating, or dissolving.
- § 164. Authority of court or judge.
- § 165. Persons entitled to move.
- § 166. Persons entitled to oppose.
- § 167. Time for motion.
- § 168. Motion to dissolve or vacate.
- § 169. — In general.
- § 170. — Notice.
- § 171. — On bill or original papers.
- § 172. — On answer.
- § 173. — Affidavits in support of motion.
- § 174. — Opposing and rebutting affidavits and other evidence.
- § 175. — Hearing and determination.
- § 176. — Order.
- § 177. Motion to modify.
- § 178. Continuance, dissolution, or discharge on security.
- § 179. Dissolution by causes subsequent to grant of injunction.
- § 180. — Proceedings in action.
- § 181. — Dismissal or other termination of action.

**IV. Preliminary and Interlocutory Injunctions—Continued.****(B) CONTINUING, MODIFYING, VACATING, OR DISSOLVING—Continued.**

- § 182. — Death of party.
- § 183. Reinstatement.
- § 184. Effect of dissolution or discharge.
- § 185. Damages on dissolution.
- § 186. — Liability.
- § 187. — Assessment.
- § 188. Costs on dissolution.

**V. Permanent Injunction and Other Relief.**

- § 189. Nature and scope of relief.
- § 190. Permanent injunction in general.
- § 191. Perpetuation of temporary injunction.
- § 192. Persons who may be restrained.
- § 193. Stay or suspension of injunction.
- § 194. Alternative, additional, or incidental equitable relief.
- § 195. Recovery of damages instead of injunction.
- § 196. Security for damages instead of injunction.
- § 197. Recovery of damages in addition to injunction.
- § 198. Assessment of damages.
- § 199. Relief to defendant.
- § 200. Costs and fees.

**VI. Writ, Order, or Decree, Service, and Enforcement.**

- § 201. Nature of writ or mandate.
- § 202. Writ or order.
- § 203. — Issuance.
- § 204. — Form and requisites.
- § 205. — Operation and effect.
- § 206. — Defects and objections.
- § 207. Final judgment or decree.
- § 208. — In general.
- § 209. — By default.
- § 210. — Opening and vacating or modifying.
- § 211. — Operation and effect in general.
- § 212. — Persons concluded.
- § 213. Service of writ or order.
- § 214. Service of process in action.
- § 215. Enforcement.

**VII. Violation and Punishment.**

- § 216. Nature and elements of violation.
- § 217. Writ or mandate violated.
- § 218. — In general.
- § 219. — Validity and regularity.
- § 220. — Pendency of stay or proceedings for review.
- § 221. Knowledge or notice.
- § 222. Ability to obey.
- § 223. Acts or conduct constituting violation.
- § 224. Excuse and justification.
- § 225. — In general.
- § 226. — Good faith.

**VII. Violation and Punishment—Continued.**

- § 227. — Advice of counsel.
- § 228. Persons committing acts of violation and persons liable therefor.
- § 229. Power to punish.
- § 230. Proceedings.
- § 231. Review.
- § 232. Punishment.
- § 233. Costs.

**VIII. Liabilities on Bonds or Undertakings.**

- § 234. Accrual or release of liability by breach or fulfillment of conditions.
- § 235. — Bonds or undertakings to procure or sustain injunction.
- § 236. — Bonds or undertakings to prevent or dissolve injunction.
- § 237. Rights and remedies of sureties.
- § 238. Discharge of sureties.
- § 239. Extent of liability.
- § 240. Exclusiveness of remedy on bond.
- § 241. Enforcement in injunction suit.
- § 242. Actions.
- § 243. — Rights of action.
- § 244. — Conditions precedent.
- § 245. — Defenses.
- § 246. — Jurisdiction and venue.
- § 247. — Time to sue and limitations.
- § 248. — Parties.
- § 249. — Process and appearance.
- § 250. — Pleading.
- § 251. — Evidence.
- § 252. — Damages.
- § 253. — Trial.
- § 254. — Judgment.
- § 255. — Appeal and error.
- § 256. — Costs.

**IX. Wrongful Injunction.**

- § 257. Nature and grounds of liability.
- § 258. Persons entitled to damages.
- § 259. Persons liable.
- § 260. Recovery or set-off of damages in injunction suit.
- § 261. Actions for damages.

*Cross-References.*

Adequacy of legal remedy as affecting jurisdiction of federal courts, see "Courts," § 262.  
 Against collection of demand as suspending running of interest, see "Interest," § 52.  
 Appointment of receiver incident to injunction, see "Receivers," § 7.  
 As affecting duration of lien of judgment, see "Judgment," § 795.  
 As affecting duty to file list of property for taxation, see "Taxation," § 331.

As affecting limitation of actions, see "Limitation of Actions," § 111.  
 As affecting right of action for trespass, see "Trespass," § 23.  
 As affecting right to equitable relief against judgment of justices, see "Justices of the Peace," § 128.  
 As cause for prevention of discharge of accused for delay in prosecution, see "Criminal Law," § 576.

As defense in trover, see "Trover and Conversion," § 22.  
 Counterclaim in injunction proceedings, see "Set-Off and Counterclaim," §§ 14, 23.  
 Delay of performance of contract by injunction as extending time of performance, see "Contracts," § 300.  
 Delay of performance of municipal contract caused by injunction as affecting rights of parties, see "Municipal Corporations," § 364.  
 Issuance of injunction by referee in bankruptcy, see "Bankruptcy," § 224.  
 Mandamus to compel issuance of, or other action by court or judge in reference to, injunction, see "Mandamus," § 37.  
 Mandamus to compel performance of act enjoined, see "Mandamus," § 6.  
 Mandatory injunction or mandamus as proper remedy, see "Mandamus," § 3.  
 Motive in bringing suit, see "Action," § 7.  
 Power of federal court to restrain proceedings in state court against bankrupt, see "Bankruptcy," § 391.  
 Presumption as to regularity of proceedings, see "Evidence," § 82.  
 Prohibition against injunction proceedings, see "Prohibition," §§ 3, 10.  
 Prohibition in injunction proceedings, see "Prohibition," § 5.  
 Remedy by injunction as affecting right to mandamus, see "Mandamus," § 3.  
 Remedy by injunction as excluding quo warranto, see "Quo Warranto," § 3.  
 Right of agent to enjoin proceedings against him as tenant, see "Principal and Agent," 183.  
*Incidental to particular remedies or proceedings.*  
 See "Bankruptcy," §§ 102, 104, 105; "Creditors' Suit," § 32; "Divorce," §§ 87, 206; "Ejectment," §§ 57, 133; "Interpleader," § 22; "Quieting Title," § 32; "Specific Performance," § 108; "Waste," § 17.  
 Against firms or partners, see "Partnership," § 209.  
 Against insolvent corporations, see "Corporations," § 549.  
 Appointment of receiver of railroad company, see "Railroads," § 206.  
 Arbitration, see "Arbitration and Award," § 78.  
 Attack on corporate existence of municipality, see "Municipal Corporations," § 18.  
 Between partners, see "Partnership," § 118.  
 Between stockholders and officers or agents of corporation, see "Corporations," § 320.  
 By or against bank, see "Banks and Banking," § 279.  
 By or against corporations in general, see "Corporations," § 510.  
 By or against foreign corporations, see "Corporations," § 671.  
 By or against receivers, see "Receivers," § 182.  
 By or against trustee in bankruptcy, see "Bankruptcy," § 301.  
 Ejectment to recover mining property, see "Mines and Minerals," § 54.  
 For dissolution and accounting of partnership, see "Partnership," § 324.

For infringement of copyright, see "Copyrights," §§ 85, 86.  
 For infringement of patent, see "Patents," §§ 294-308.  
 For infringement of trade-mark or trade-name, see "Trade-Marks and Trade-Names," §§ 95, 97.  
 For separate maintenance of wife, see "Husband and Wife," § 293.  
 For unfair competition in trade, see "Trade-Marks and Trade-Names," §§ 95, 97.  
 Receivership proceedings, see "Receivers," § 195.  
 To determine adverse claim to mining location, see "Mines and Minerals," § 38.  
 To enforce liabilities against married woman's separate estate, see "Husband and Wife," § 176.  
 To enforce liability of officers and agents of corporation for corporate debts and acts, see "Corporations," § 359.  
 To enforce liability of stockholders for corporate debts and acts, see "Corporations," § 267.  
 To establish and enforce trust, see "Trusts," § 368.  
 To establish boundaries, see "Boundaries," § 43.  
 To foreclose mortgages, see "Chattel Mortgages," § 281; "Mortgages," § 465½.  
 To protect exemption rights, see "Exemptions," § 140.  
 To revoke mining license, see "Mines and Minerals," § 84.  
 To set aside assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 349.  
 To set aside fraudulent conveyances, see "Fraudulent Conveyances," § 304.  
 To wind up corporation, see "Corporations," § 620.  
*Relief against particular acts or proceedings.*  
 See "Nuisance," §§ 18-40, 75, 77-88; "Waste," § 17.  
 Acting as pilot, see "Pilots," § 6.  
 Action or entry of judgment on award, see "Arbitration and Award," § 78.  
 Appropriation of property for public use, see "Eminent Domain," §§ 272-276.  
 Assessment for public improvements, see "Municipal Corporations," § 513.  
 Assessment for taxation, see "Taxation," § 498.  
 Assessments to aid construction of gravel roads or turnpikes by private corporations, see "Turnpikes and Toll Roads," § 10.  
 Award of contract for public improvements, see "Municipal Corporations," § 336.  
 Breach of contract with school district for supplying text-books, see "Schools and School Districts," § 86.  
 Change of schoolhouse site, see "Schools and School Districts," § 69.  
 Collection of fees and taxes for licenses, see "Intoxicating Liquors," § 94.  
 Collection of license tax on express company, see "Carriers," § 8.  
 Collection of tolls, see "Turnpikes and Toll Roads," § 43.

- Combinations in restraint of trade, see "Monopolies," § 24.
- Compelling city to designate streets for water pipes, see "Waters and Water Courses," § 192.
- Compelling removal of dams, see "Waters and Water Courses," § 174.
- Compelling removal of obstruction in drain, see "Waters and Water Courses," § 119.
- Condemnation of turnpike for failure to keep in repair, see "Turnpikes and Toll Roads," § 20.
- Construction of bridge, see "Bridges," § 23.
- Construction of fence, see "Fences," § 18.
- Construction of street railroad, see "Street Railroads," § 57.
- Construction of telegraph or telephone system, see "Telegraphs and Telephones," § 10.
- Construction of wharf, see "Navigable Waters," § 43; "Wharves," § 8.
- Construction or maintenance of wharf or pier, see "Navigable Waters," § 43.
- Conveyance of lands purchased by state at tax sale, see "Taxation," § 679.
- Conveyance to purchaser at execution sale, see "Execution," § 308.
- Crossing of one railroad by another, see "Railroads," §§ 89, 91, 94.
- Cutting or removing timber from mortgaged premises, see "Mortgages," § 196.
- Declaration and publication of result of local option election, see "Intoxicating Liquors," § 36.
- Denial or infringement of right of exemption, see "Exemptions," §§ 140, 141.
- Discrimination by carriers, see "Carriers," § 201.
- Disposition by husband of property to avoid payment of alimony, see "Divorce," § 206.
- Disposition of, or interference with, property pending foreclosure of mortgage, see "Chattel Mortgages," § 281; "Mortgages," § 465½.
- Disposition of property pending supplementary proceedings, see "Execution," § 390.
- Dispossession proceedings by purchaser at foreclosure sale, see "Mortgages," § 544.
- Drainage of highways, see "Highways," § 120.
- Employment by school directors of teacher not having certificate, see "Schools and School Districts," § 48.
- Enactment of statute, see "Constitutional Law," § 70.
- Encroachment on fishing location, see "Fish," § 10.
- Enforcement of assessment for public improvements, see "Drains," § 91; "Highways," § 148; "Levees," § 29; "Municipal Corporations," §§ 534-538.
- Enforcement of assessment in irrigation districts, see "Waters and Water Courses," § 231.
- Enforcement of contract specifying charges for gas, see "Gas," § 14.
- Enforcement of judgment, see "Judgment," §§ 403-469.
- Enforcement of judgment in ejectment, see "Ejectment," § 119.
- Enforcement of judgments of justices of the peace, see "Justices of the Peace," § 128.
- Enforcement of mechanic's lien, see "Mechanics' Liens," § 251.
- Enforcement of municipal regulation of charges for gas, see "Gas," § 14.
- Enforcement of regulations relating to interstate transportation, see "Carriers," § 34.
- Enforcement of stockholder's liability by creditor, see "Banks and Banking," § 49.
- Enforcement of taxes, see "Highways," § 129; "Municipal Corporations," § 979; "Schools and School Districts," § 107; "Taxation," §§ 606-611.
- Enforcement of usurious contract, see "Usury," § 94.
- Enforcement of vendor's lien, see "Vendor and Purchaser," § 272.
- Enforcement of violations of regulations relating to carriers, see "Carriers," § 18.
- Erection of buildings in violation of city ordinances, see "Municipal Corporations," § 627.
- Erection of electric wires in street, see "Electricity," § 20.
- Erection of tollgate, see "Turnpikes and Toll Roads," § 42.
- Exaction of tolls, see "Turnpikes and Toll Roads," § 38.
- Execution, see "Execution," §§ 170-172.
- Execution against stockholder on judgment against corporation, see "Corporations," § 256.
- Execution in ejectment, see "Ejectment," § 119.
- Execution of contract by corporation, see "Corporations," § 189.
- Execution on judgment on bond in appeal from justice's court, see "Justices of the Peace," § 191.
- Execution or delivery of tax deed, see "Taxation," § 752.
- Exercise of power of sale in mortgage, see "Mortgages," § 338.
- Expenditures or incurrence of indebtedness by municipality, see "Municipal Corporations," § 994; "Schools and School Districts," § 111; "States," § 168½.
- Expulsion of club member, see "Clubs," § 5.
- Expulsion or suspension of member of board of trade, see "Exchanges," § 5.
- Expulsion, suspension, or exclusion of member of association, see "Associations," § 10.
- Extension of city limits, see "Municipal Corporations," § 33.
- Failure to furnish means of transportation, see "Carriers," § 18.
- Foreclosure, see "Building and Loan Associations," §§ 33, 38, 39; "Chattel Mortgages," § 256; "Mortgages," § 413.
- Formation of reclamation districts, see "Drains," § 14.
- Furnishing news or market reports or quotations, see "Telegraphs and Telephones," § 44.
- Grant of franchise, see "Street Railroads," § 26.
- Grant of license, see "Intoxicating Liquors," § 73.
- Illegal voting of corporate shares, see "Corporations," § 197.

- Improper issuance of corporate stock, see "Corporations," § 189.
- Improper use of carrier's premises, see "Carriers," § 16.
- Improper use of private road, see "Private Roads," § 11.
- Incorporation of municipality, see "Municipal Corporations," § 12.
- Infringement of copyright, see "Copyrights," §§ 85, 86.
- Infringement of patent, see "Patents," §§ 294-308, 317.
- Infringement of rights in mines and minerals, see "Mines and Minerals," § 52.
- Infringement of rights in price quotations by board of trade, see "Exchanges," § 13.
- Infringement of trade-mark or trade-name, see "Trade-Marks and Trade-Names," §§ 95, 97.
- Injuries from defects or obstructions in drains, see "Drains," § 63.
- Injuries to property from operation of gas and oil wells, see "Mines and Minerals," §§ 121-125.
- Injuries to works used in irrigation enterprises, see "Waters and Water Courses," § 264.
- Injury to easement, see "Easements," § 61.
- Interference by third persons with property of bankrupt, see "Bankruptcy," §§ 104, 105.
- Interference with adjoining landowner, see "Adjoining Landowners," §§ 3, 4, 9.
- Interference with apprentice, see "Apprentices," § 21.
- Interference with construction of private road, see "Private Roads," § 5.
- Interference with ferry franchise, see "Ferries," § 19.
- Interference with gasworks, see "Gas," § 21.
- Interference with license in respect to real property by licensor, see "Licenses," § 55.
- Interference with possession of receiver, see "Receivers," § 73.
- Interference with relation of husband and wife, see "Husband and Wife," § 337.
- Interference with right of company to occupy street, see "Railroads," § 79.
- Interference with right of receiver in respect to lease, see "Railroads," § 208.
- Interference with right of way, see "Railroads," §§ 67, 69.
- Interference with rights of claimants of public lands pending contest in General Land Office, see "Public Lands," § 103.
- Interference with rights under mining lease, see "Mines and Minerals," § 81.
- Interference with stock running at large, see "Animals," § 55.
- Interference with water rights in general, see "Waters and Water Courses," §§ 33, 152, 158½, 247; interference with artificial ponds, reservoirs, channels, and dams, see "Waters and Water Courses," § 177; interference with bed of stream, see "Waters and Water Courses," § 98; interference with lakes or ponds, see "Waters and Water Courses," § 114; interference with riparian rights, see "Waters and Water Courses," § 49; interference with wells, springs, or percolating waters, see "Waters and Water Courses," 107; maintenance of waterworks by municipality, see "Waters and Water Courses," § 195; obstruction or detention of water course, see "Waters and Water Courses," § 61; pollution of municipal water supply, see "Waters and Water Courses," § 196; pollution of water course, see "Waters and Water Courses," § 75; shutting off water for nonpayment of charges, see "Waters and Water Courses," § 203; flowage of land by surface waters, see "Waters and Water Courses," § 124; enforcement of water rates, see "Waters and Water Courses," § 203; diversion of water course, see "Waters and Water Courses," § 85.
- Issuance of license to sell liquor, see "Intoxicating Liquors," § 73.
- Judicial proceedings, concurrent and conflicting jurisdiction of courts of different states or countries, see "Courts," § 516.
- Judicial proceedings, concurrent and conflicting jurisdiction of different federal courts, see "Courts," § 526.
- Judicial proceedings, concurrent and conflicting jurisdiction of state and federal courts, see "Courts," §§ 507, 508.
- Judicial proceedings, concurrent and conflicting jurisdiction of state courts, see "Courts," § 480.
- Judicial proceedings in foreign state against assets in insolvency, see "Insolvency," § 70.
- Laying gas pipes under railroad right of way, see "Gas," § 9.
- Levy of tax, see "Taxation," § 301.
- Location of public dispensary, see "Intoxicating Liquors," § 128.
- Making municipal improvement without payment of damages, see "Municipal Corporations," § 404.
- Making public improvements, see "Municipal Corporations," § 323.
- Misapplication of funds, see "Municipal Corporations," § 995; "States," § 168½; "Towns," § 61.
- Nomination of candidates for office, see "Elections," § 154.
- Nuisances, see "Health," § 19; "Municipal Corporations," § 846; "Nuisance," §§ 18-40, 75, 77-88.
- Nuisances affecting enjoyment of leased property, see "Landlord and Tenant," § 142.
- Obstruction of highway, see "Highways," §§ 87, 159.
- Obstruction of navigation, see "Navigable Waters," § 26.
- Obstruction of or interference with performance of official duty, see "Officers," § 113.
- Obstruction of private road, see "Private Roads," § 9.
- Obstruction of street, see "Municipal Corporations," § 697.
- Occupancy of public office, see "Officers," § 82.
- Opening highway, see "Highways," § 64.
- Operation in street, see "Railroads," § 79.
- Overcharges by telegraph or telephone companies, see "Telegraphs and Telephones," § 33.

- Partition, see "Partition," § 52.  
 Payment of claims by receiver, see "Receivers," § 163.  
 Payment of levee district warrants, see "Levees," § 33.  
 Performance of contracts by foreign corporation, see "Corporations," § 657.  
 Permitting growth of noxious weeds, see "Agriculture," § 8.  
 Pollution of waters, see "Navigable Waters," §§ 35, 40.  
 Proceedings on decree pending bill of review, see "Equity," § 459.  
 Proceedings under illegal contract affecting county, see "Counties," § 130.  
 Protection of homestead rights, see "Homestead," § 209.  
 Reading Bible in public schools, see "Schools and School Districts," § 165.  
 Refusal of election officers to correct returns, see "Elections," § 254.  
 Refusal of postmaster general to admit publication as second-class matter, see "Post Office," § 15.  
 Refusal to return apprentice, see "Apprentices," § 21.  
 Refusal to supply gas to private consumers, see "Gas," § 13.  
 Removal of fixtures by tenant, see "Landlord and Tenant," § 160.  
 Removal of location of college, see "Colleges and Universities," § 5.  
 Removal of private crossing over railroad, see "Railroads," § 104.  
 Removal of railroad stations, see "Railroads," § 60.  
 Removal of site of county buildings, see "Counties," § 37.  
 Removal of telegraph or telephone poles and wires from streets or roads, see "Telegraphs and Telephones," § 10.  
 Removal of telephone, see "Telegraphs and Telephones," § 28.  
 Repeal of ordinance granting consent to construction of railroad in street, see "Railroads," § 79.  
 Reporting expulsion, see "Trade Unions," § 4.  
 Sale of assets of assignor for benefit of creditors, see "Assignments for Benefit of Creditors," § 241.  
 Sale of corporate stock, see "Corporations," § 111.  
 Sale of land for taxes, see "Taxation," § 652.  
 Sale of property of decedent, see "Executors and Administrators," § 357.  
 Sale of theater tickets by speculators, see "Theaters and Shows," § 4.  
 Sale on foreclosure, see "Mortgages," § 504.  
 Sale, removal, or use of property subject to landlord's lien, see "Landlord and Tenant," § 251.  
 Sale under deed of trust, see "Building and Loan Associations," §§ 38, 39.  
 Separation of village from school district, see "Schools and School Districts," § 34.  
 Shutting off gas supply, see "Gas," § 12.  
 Storage of grain by warehousemen in their own elevators, see "Warehousemen," § 8.  
 Summary proceedings by landlord to recover possession of demised premises, see "Landlord and Tenant," § 299.  
 Threatened cloud on title, see "Quieting Title," § 8.  
 Transfer of lease, see "Landlord and Tenant," § 79.  
 Transfer or disposition of property by debtor pending bankruptcy proceedings, see "Bankruptcy," § 102.  
 Transportation of natural gas, see "Gas," § 9.  
 Trespass on cemetery, see "Cemeteries," §§ 20, 21.  
 Trespass on land of ferry company, see "Ferries," § 8.  
 Trespass on public lands, see "Public Lands," § 17.  
 Unauthorized or illegal acts by county or officers, see "Counties," § 196.  
 Unauthorized or illegal acts by municipality or officers in general, see "Municipal Corporations," § 993.  
 Unauthorized or illegal acts by school district or officers, see "Schools and School Districts," § 111.  
 Unauthorized or illegal acts by state or officers, see "States," § 168½.  
 Unauthorized or illegal acts by town or officers, see "Towns," § 61.  
 Unauthorized use of railroad ticket, see "Carriers," § 254.  
 Unfair competition in trade, see "Trade-Marks and Trade-Names," §§ 95, 97.  
 Unlawful use of the word "university," see "Colleges and Universities," § 3.  
 Use by one railroad company of tracks of another company, see "Railroads," § 80.  
 Use of banks in floating shingle boats in navigable streams, see "Navigable Waters," § 18.  
 Use of corporate name, see "Corporations," § 49.  
 Use of easement, see "Easements," § 55.  
 Use of name, see "Names," § 17.  
 Use of wharf or pier, see "Navigable Waters," § 43.  
 Usurious contract of corporation, see "Corporations," § 189.  
 Vacation of highway, see "Highways," § 77.  
 Violation of party wall agreement, see "Party Walls," § 10.  
 Violations of liquor laws, see "Intoxicating Liquors," §§ 21, 258-281.  
 Waste on land subject to lien for taxes, see "Taxation," § 514½.  
 Waste or other disposition of or injury to municipal property, see "Municipal Corporations," § 996.  
 Withdrawal of charter of college fraternity, see "Clubs," § 10.  
 Withholding mail by postmaster, see "Post Office," § 26.  
 Wrongful assessment or collection of license fees or taxes, see "Licenses," § 35.  
*Review of proceedings for injunction.*  
 Action to review judgment, see "Judgment," § 335.  
 Appealability of orders, see "Appeal and Error," § 91.  
 As affected by amount in controversy, see "Appeal and Error," § 41.  
 As affected by finality of order, see "Appeal and Error," § 71.



Bond on appeal from two or more orders, see "Appeal and Error," § 394.  
 Decisions reviewable, see "Appeal and Error," §§ 100, 954.  
 Jurisdiction of United States Circuit Court of Appeals to review order refusing injunction, see "Courts," § 407.  
 Jurisdiction of United States Circuit Courts of Appeals to review interlocutory orders or decrees granting injunction, see "Courts," § 407; dissolving or continuing injunction, see "Courts," § 407.  
 Matters or evidence considered, see "Appeal and Error," § 837.  
 Necessity of approval of appeal bond, see "Appeal and Error," § 386.  
 Necessity of filing undertaking, see "Appeal and Error," § 373.  
 Necessity of notice of appeal, see "Appeal and Error," § 396.  
 Persons entitled to review, see "Appeal and Error," §§ 151, 153, 155.

Prejudicial nature of error, see "Appeal and Error," § 1043.  
 Presumptions, see "Appeal and Error," § 920.  
 Review of questions of fact, see "Appeal and Error," §§ 987, 1024.  
 Review on appeal from final judgment, see "Appeal and Error," § 870.  
 Review on certiorari of order continuing modifying or vacating temporary injunction, see "Certiorari," § 17.  
 Review on separate appeal from interlocutory order, see "Appeal and Error," § 874.  
 Specification of errors, see "Appeal and Error," § 726.  
 Sufficiency of record to present questions for review, see "Appeal and Error," § 684.  
 Suspension of order pending appeal, see "Appeal and Error," § 458.  
 Waiver of right of review, see "Appeal and Error," §§ 154, 157.

## I. NATURE AND GROUNDS IN GENERAL.

### (A) NATURE AND FORM OF REMEDY.

#### § 1. Nature and purpose in general.

#### § 2. Constitutional and statutory provisions.

##### *Cross-Reference.*

Subject and title of act, see "Statutes," § 117.

(a) Where a statute has made provision for all the circumstances of a particular case, no relief in equity can be afforded in such case by injunction, although the provisions of the statute may conflict with the notions of natural justice and equity entertained by a Court of Chancery.—*Glenn v. Fowler*, 8 G. & J. 340.

#### § 3. Actions and proceedings in aid of which injunction is authorized.

##### *Cross-Reference.*

Receivership proceedings, see "Receivers," § 165.

(a) A Court of Chancery will restrain a party from doing an act injurious to an individual, or which may be prejudicial as a public nuisance, pending judicial proceedings before those tribunals by which the authority to do the act, or its lawfulness, is to be determined.—*Williamson v. Carnan*, 1 G. & J. 184.

#### § 4. Preventive and protective remedy.

(a) The court has jurisdiction to compel

a defendant, by means of an injunction specially worded, to do a substantive act, whether such injunction be merely ancillary to the relief prayed by the bill or the ultimate object of the suit.—*Carlisle v. Stevenson*, 3 Md. Ch. 499. [*Cited and annotated*, see post, § 5.]

(b) An injunction, unless issued after the decree, when it becomes a judicial process, can only be used for the purpose of prevention and protection, and not for the purpose of commanding the defendant to undo anything he had previously done.—*Washington University v. Green*, 1 Md. Ch. 97. [*Cited and annotated* in 20 L. R. A. 169, on power to grant mandatory injunctions.]

(c) The office of an injunction is to restrain the acts of the defendant in the suit, and not to compel him to undo what he has already done, or to restore anything, further than this results from restraining the acts of the defendant.—*In re Murdock*, 2 Bland 461, 20 Am. Dec. 381. [*Cited and annotated* in 47 L. R. A. (N. S.) 1155, on mandatory injunction to restore status existing prior to violation of prohibitory injunction; in 7 L. R. A. (N. S.) 70, on injunctive relief as to fences or gates.]

#### § 5. Mandatory injunction.

##### *Cross-References.*

See "Mandamus," § 106; "Nuisance," § 24.

Enforcement of contracts, see post, § 57.

Preliminary injunction, see post, § 133.

Removal of buildings erected in violation of covenant, see post, § 62.

Against encroachment on adjoining lands, see "Adjoining Landowners," § 9.

Enforcement of rights in public lands, see "Public Lands," § 103.

Mandatory injunction or mandamus as proper remedy, see "Mandamus," § 3.

To compel city to designate streets for pipes of water company, see "Waters and Water Courses," § 192.

To compel removal of dams, see "Waters and Water Courses," § 174.

To compel removal of obstruction in drain, see "Waters and Water Courses," § 119.

#### Annotation.

As to power of equity to grant mandatory injunctions.—20 L. R. A. 161, note.

(a) Where an injunction, if granted, would accomplish all that a decree for specific performance could effect, the principles governing a bill for specific performance control.—*Whalen v. Baltimore & O. R. Co.*, 108 Md. 11, 69 Atl. 390.

(b) Where a railroad laid 5 sets of tracks across a projected street under a license from the owner of the land, and thereafter, without further authority, placed 10 additional tracks across such street, together with certain switch points therein, the landowner was entitled to a mandatory injunction to compel the removal of such additional tracks, etc.—*Northern Cent. Ry. Co. v. Canton Co.*, 104 Md. 682, 65 Atl. 337.

(c) A court of equity has power to grant mandatory injunctions.—*Carlisle v. Stevenson*, 3 Md. Ch. 499. [Cited and annotated in 20 L. R. A. 164, on power to grant mandatory injunctions; in 13 L. R. A. (N. S.) 175, on injunction against repeated trespass.]

### § 6. Common or special injunctions.

### § 7. Existence of other remedy in general.

#### Cross-Reference.

As affecting right to equitable relief against judgment of justice of the peace, see "Justices of the Peace," § 128.

(a) Where a statute has made provision for all the circumstances of a particular case, injunction cannot issue, though the provisions of the statute may conflict with the notions of natural equity and justice entertained by the equity court.—*Glenn v. Fowler*, 8 G. & J. 340.

### § 8. Successive injunctions.

#### Cross-References.

Reinstatement of injunction, see post, § 183.

Successive applications on refusal, see post, § 158.

Power of probate court to protect executor, see "Executors and Administrators," § 76.

#### (B) GROUNDS OF RELIEF.

#### Cross-Reference.

Temporary injunction, see post, §§ 136, 137.

### § 9. Nature and existence of right requiring protection.

(a) Where the right of a tenant to a crop maturing after the expiration of his lease was equitable, and rested on an equitable estoppel, a court of equity had jurisdiction to protect by injunction the equitable interest of the tenant.—*Carmine v. Bowen*, 104 Md. 198, 64 Atl. 932.

(b) Code 1888, art. 16, § 69, provides that no court shall refuse to issue an injunction on the mere ground that the party asking for the same has an adequate remedy in damages. Held, that, where plaintiff's application for an injunction was refused on other grounds in addition to the fact that he had an adequate remedy at law, the statute had no application.—*Brehm v. Sperry*, 92 Md. 378, 48 Atl. 368. (See Code 1911, art. 16, § 84.)

(c) Where the rights involved are purely legal, a court of equity will interpose by injunction solely to protect the property until such rights can be determined by a court of law; and this protection will only be given in cases where the mischief threatened or impending is likely to be ruinous or irreparable.—*Lanahan v. Gahan*, 37 Md. 105.

(d) The writ of injunction will not be awarded in doubtful or new cases, not coming within well-established principles of equity.—*Hardesty v. Taft*, 23 Md. 512, 37 Am. Dec. 584. [Cited and annotated in 25 L. R. A. 483, as to how far right to vote is absolute; in 3 L. R. A. (N. S.) 383, on equity interference in matters preceding elections.]

§§ 10, 11. (See Analysis.)

### § 12. Injury sustained or anticipated.

(a) A city will not be enjoined from constructing a water reservoir dam where it is uncertain whether plaintiff's property will be injured thereby, leaving plaintiff to re-

new the application on injury becoming apparent.—*Warren Mfg. Co. v. City of Baltimore*, 119 Md. 188, 86 Atl. 502.

(b) An injunction could not be properly granted where it was asked to prevent the carrying out of an agreement to settle a suit, and it appeared it had already been settled.—*Hendrix v. Bull*, 111 Md. 389, 74 Atl. 572.

### § 13. Substantial character of right or of injury.

(a) A writ of injunction should not be issued for trivial or nominal wrongs.—*Fralinger v. Cooke*, 108 Md. 682, 71 Atl. 529. [Cited and annotated in 28 L. R. A. (N. S.) 376, on power of municipality to permit abutting owners to extend structures into street.]

### § 14. Irreparable injury.

#### Cross-References.

See ante, § 9; post, §§ 34, 38, 44, 46-53, 118, 136, 163.

#### Annotation.

Irreparable injury as affecting right to injunction against erection, maintenance, or removal of fences or gates on ground of nuisance.—7 L. R. A. (N. S.) 78, note.

Insufficiency of allegation of irreparable injury in action to enjoin trespass to cut timber.—22 L. R. A. 239, note.

Irreparable injury as ground for injunction against collection of illegal taxes.—22 L. R. A. 704, note.

(a) Courts will not interfere to prevent injury by injunction unless the harm will be great or the loss irreparable.—*Cockey v. Carroll*, 4 Md. Ch. 344. [Cited and annotated in 13 L. R. A. (N. S.) 175, on injunction against repeated trespass.]

### § 15. Inadequacy of remedy at law.

### § 16.—In general.

(a) Where a railroad has the right to have its road connected with that of another and to run its trains thereover, there is no adequate remedy at law for a denial of the right, so that injunction will lie to compel the granting thereof.—*Union R. Co. v. Canton R. Co.*, 105 Md. 12, 65 Atl. 409.

(b) The fact that a complainant has no present remedy at law, but can only wait until sued by the defendant and stand on his rights, will not justify injunctive relief, notwithstanding that the suit may be long delayed.—*Welde v. Scotten*, 59 Md. 72. [Cited

and annotated in 30 L. R. A. 114, on injunction against execution sales or other proceedings under final process.]

(c) Injunction will not lie when there is an adequate remedy at law.—*Cook v. Murphy*, 7 G. & J. 282. [Cited and annotated in 31 L. R. A. 763, 764, on injunction against judgments for defenses existing prior to rendition; in 32 L. R. A. 323, on equitable jurisdiction as to injunctions against judgments.] *Lewis v. Levy*, 16 Md. 85. [Cited and annotated in 30 L. R. A. 116, 135, on injunction against execution sales or other proceedings under final process.] *Freeland v. Reynolds*, 16 Md. 416. [Cited and annotated in 30 L. R. A. 116, 135, on injunction against execution sales or other proceedings under final process.] *O'Neal v. Virginia & Maryland Bridge Co.*, 18 Md. 1, 79 Am. Dec. 669. [Cited and annotated in 22 L. R. A. 702, 703, on injunction against collection of illegal taxes; in 29 L. R. A. 69, on taxing bridge over boundary river.] *Chappell v. Cox*, 18 Md. 513. [Cited and annotated in 30 L. R. A. 106, 116, on injunction against execution sales or other proceedings under final process; in 32 L. R. A. 326, 327, on equitable jurisdiction as to injunctions against judgments; in 46 L. R. A. 491, 492, on levy on partnership property for partner's debt.] *Hubbard v. Mobray*, 20 Md. 165. [Cited and annotated in 39 L. R. A. (N. S.) 35, on right to preliminary injunction having effect of transferring possession of property.] *McCreery v. Sutherland*, 23 Md. 471, 87 Am. Dec. 578. [Cited and annotated in 30 L. R. A. 119, on injunction against execution sales or other proceedings under final process.] *Banks v. Busey*, 34 Md. 437; *Cumberland & P. R. Co. v. Pennsylvania R. Co.*, 57 Md. 267; *Gorsuch v. Thomas*, 57 Md. 334. [Cited and annotated in 30 L. R. A. 566, on injunction against judgment for matters subsequent to rendition; in 31 L. R. A. 771, on injunction against judgments for defenses existing prior to rendition; in 32 L. R. A. 323, 328, on equitable jurisdiction as to injunctions against judgments.] *Whalen v. Dalashmutt*, 59 Md. 250.

(d) Where actions have been brought at law and damages recovered, and the injury complained of is still persisted in by defendant, equity will interfere by injunction, as it thereby appears that the legal remedy is inadequate.—*Carlisle v. Stevenson*, 3 Md. Ch. 499. [Cited and annotated in 20 L. R. A. 164, on power to grant mandatory injunctions; in 13 L. R. A. (N. S.) 175, on injunction against repeated trespass.]

(e) A court of equity may interfere where the courts of ordinary jurisdiction are inadequate instruments of justice, and to restrain the assertion of doubtful rights in a manner productive of irreparable damage,

and to prevent injury to a third person by the doubtful title of others, or where some inequitable advantage has been taken, for which courts of law can give no remedy.—*Richardson v. City of Baltimore*, 8 Gill 433.

### § 17.—Recovery of damages.

(a) Injunction will not lie when there is an adequate remedy by an action for damages.—*Hardesty v. Taft*, 23 Md. 512, 87 Am. Dec. 584. [Cited and annotated in 25 L. R. A. 483, as to how far right to vote is absolute; in 3 L. R. A. (N. S.) 383, on equity interference in matters preceding elections.]

### § 18.—Insolvency of defendant.

(a) Where a partner who has been authorized to collect partnership assets and pay debts is insolvent, he will be enjoined from wasting or misapplying such assets.—*Drury v. Roberts*, 2 Md. Ch. 157.

### § 19. Prevention of multiplicity of suits.

#### Cross-References.

Enforcement, statutes or ordinances, see post, § 85.

Ground for restraining actions, see post, § 26.

Injury to personal property, see post, § 54.

Trespass or other injury to real property, see post, §§ 46-53.

#### Annotation.

Power of equity to take jurisdiction because of multiplicity of actions at law for personal injuries growing out of a single act.—20 L. R. A. (N. S.) 848; 35 L. R. A. 491, notes.

Multiplicity of suits as ground for injunction to compel or prevent erection, maintenance or removal of fences or gates.—7 L. R. A. (N. S.) 55, note.

Multiplicity of suits as ground for injunction against collection of illegal taxes.—22 L. R. A. 703, note.

Injunction against trespass to cut timber on ground of multiplicity of suits.—22 L. R. A. 236, note.

(a) Where the remedy at law would require such a multiplicity of suits as would leave the injured party without remedy, equity will interfere by injunction.—*McCreery v. Sutherland*, 23 Md. 471, 87 Am. Dec. 578. [Cited and annotated in 30 L. R. A. 119, on injunction against execution sales or other proceedings under final process.]

(b) Each voter having a separate and distinct remedy for the willfully improper deprivation of his vote, the joinder of others like circumstanced or injured as complain-

ants in equity, on the ground of avoiding a multiplicity of suits, will not avail to afford injunctive relief.—*Hardesty v. Taft*, 23 Md. 512, 87 Am. Dec. 584. [Cited and annotated, see supra, § 17.]

### §§ 20-24. Defenses or objections to relief.

#### Cross-Reference.

Temporary injunction, see post, § 137.

(a) An injunction will not be granted to enforce an oral agreement to keep a road open where no real harm will be done to plaintiff by closing of the road and very great damage would result to defendant by granting the relief.—*McDowell v. Biddison*, 120 Md. 118, 87 Atl. 752.

(b) Where a license issued by the state board of undertakers had expired under the express provisions of act 1902, p. 252, c. 160, § 10, which provides that all certificates and licenses issued under the act shall expire within one year from the date of the issue, a bill asking that such board be restrained from revoking the license was properly dismissed, and the preliminary injunction dissolved.—*Syfer v. Spence*, 103 Md. 66, 63 Atl. 256. (See Code, art. 43, § 239.)

(c) Equity will not grant an injunction to restrain the levy of a tax to defray the expenses incurred in holding a primary election, under act 1904, p. 870, c. 508, applicable to Allegany county, where, before the bill was filed, the levy had been made and probably most of the sum levied collected, and the primaries and the general election, at which the candidates selected at the primaries had been voted for, had been held.—*Kenneweg v. Allegany County Com'rs*, 102 Md. 119, 62 Atl. 249. [Cited and annotated in 22 L. R. A. (N. S.) 1136, 1142, 1145, on constitutionality of primary election laws.]

(d) Where, after filing a bill praying that the defendant be enjoined from the use of a division wall between his lot and that of the complainant, the latter sells his property, the injunction will not issue.—*Lanahan v. Gahan*, 37 Md. 105.

## II. SUBJECTS OF PROTECTION AND RELIEF.

### (A) ACTIONS AND OTHER LEGAL PROCEEDINGS.

#### Cross-References.

See "Eminent Domain," §§ 272-276.

Criminal prosecutions, see post, § 105.  
 Against receiver brought without leave of court, see "Receivers," § 182.  
 As affecting limitation of actions, see "Limitation of Actions," § 111.  
 Enforcement of judgment, see "Judgment," §§ 403-469; "Justices of the Peace," § 128.  
 Enforcement of mechanics' liens, see "Mechanics' Liens," § 251.  
 Enforcement of stockholders' liability, see "Banks and Banking," § 49.  
 Enforcement of usurious contract, see "Usury," § 94.  
 Enforcement of vendor's lien, see "Vendor and Purchaser," § 272.  
 Enforcement of water rates, see "Waters and Water Courses," § 203.  
 Execution, see "Execution," §§ 170-172.  
 Execution against stockholder on judgment against corporation, see "Corporations," § 256.  
 Execution and enforcement of judgments on ejectment, see "Ejectment," § 119.  
 Execution on judgment on bond in appeal from justice's court, see "Justices of the Peace," § 191.  
 Foreclosure, see "Building and Loan Associations," §§ 33, 38, 39; "Chattel Mortgages," § 256; "Mortgages," § 413.  
 Foreclosure of mortgages, see "Chattel Mortgages," § 256.  
 For partition, see "Partition," § 52.  
 Jurisdiction of federal court to enjoin enforcement of law violating federal Constitution, see "Courts," § 260.  
 Jurisdiction of federal courts to prevent a multiplicity of suits on the ground of diverse citizenship, see "Courts," § 262.  
 Proceedings in foreign jurisdiction to reach exempt property, see "Exemptions," § 141.  
 Proceedings on decree pending bill of review, see "Equity," § 459.  
 Proceedings to declare decedent's estate insolvent, see "Executors and Administrators," § 410.  
 Questioning conclusiveness of judgment, see "Judgment," § 665.  
 Removal to federal court of action to restrain proceedings in state court, see "Removal of Causes," § 6.  
 Restraining collection of demand as suspending running of interest, see "Interest," § 52.  
 Suit or entry of judgment on award, see "Arbitration and Award," § 78.  
 Summary proceedings by landlord to recover possession of demised premises, see "Landlord and Tenant," § 299.

## § 25. Proceedings which may be restrained in general.

### Annotation.

Injunction against criminal proceedings.—21 L. R. A. 84; 2 L. R. A. (N. S.) 631; 25 L. R. A. (N. S.) 193; 34 L. R. A. (N. S.) 454, notes.

(a) An injunction to prevent a distraint for rent by a landlord against the assignee

of his lessee should not be granted, since plaintiff has a complete remedy at law by an action of replevin or trespass.—*Banks v. Busey*, 34 Md. 437.

(b) The great purpose and object of equity in restraining proceedings at law is to afford a more plain, adequate, and complete remedy for the wrong complained of than the party can have at law.—*Glenn v. Fowler*, 8 G. & J. 340.

(c) The Court of Chancery will not grant an injunction to prevent the execution of a writ of replevin.—*Glenn v. Fowler*, 8 G. & J. 340.

## § 26. Commencement and prosecution of civil actions.

### Annotation.

Power of equity to take jurisdiction because of multiplicity of actions at law for personal injuries growing out of a single tort.—20 L. R. A. (N. S.) 848; 35 L. R. A. (N. S.) 491, notes.

Power of equity to take jurisdiction of suit to cancel policy for fraud and to enjoin action at law on the policy.—12 L. R. A. (N. S.) 881, note.

(a) A defendant in a subsequent action at law in a justice's court for the identical cause of action covered by a prior action is not entitled to equitable relief against the subsequent action to avoid multiplicity of suits and splitting up of causes of action.—*Baltimore & O. R. Co. v. Latimer*, 118 Md. 183, 84 Atl. 377.

(b) Where, in a suit for an accounting concerning certain usurious transactions, it was claimed that two notes were executed and indorsed by defendant N. as collateral merely to a renewal of the usurious notes, without further consideration, and pending such suit, defendant H. who was charged with taking the usury commenced suits at law against defendant N. on such notes in which by reason of the complicated method in which the transactions had been conducted by H., N. was unable to plead under oath, the amount actually due, if anything, an injunction restraining the suits at law until an accounting had been had in equity, was properly granted under Code 1904, art. 16, § 190, declaring that the court may at any stage of a cause on the application of any party thereto or party in interest, issue an

injunction commanding any party to do or refrain from doing any act or acts necessary to the granting of complete relief.—*Horner v. Nitsch*, 108 Md. 498, 63 Atl. 1052. (See Code 1911, art. 16, § 199.)

(c) In an action for damages for maintaining a garbage field near plaintiff's land, a defense that plaintiff sold the field to defendant, knowing the use to which it was to be put and consequently that plaintiff is equitably estopped from claiming damages, is one which is as available at law as in equity, and hence injunction will not lie to restrain the action.—*Roland Park Co. v. Hull*, 92 Md. 301, 48 Atl. 366.

(d) Injunction will not lie to restrain an action for a trespass and for maintaining a nuisance, to prevent a multiplicity of suits; there being no evidence that plaintiff has any existing cause of action or existing right to relief, either equitable or legal.—*Roland Park Co. v. Hull*, 92 Md. 301, 48 Atl. 366.

(e) Equity will not restrain the prosecution of suits at law merely to prevent multiplicity of suits, without regard to other considerations.—*Peninsular Const. Co. v. Merritt*, 90 Md. 589, 45 Atl. 172.

(f) Where a garnishee, after denying all liability in numerous attachments to reach an alleged indebtedness to the defendant, was sued by the defendant on the same indebtedness, in which suit the garnishee pleaded to the merits, equity would not enjoin the prosecution of such suits, and require an adjudication of all the controversies in one proceeding in equity, merely on the ground that the trial of the latter suit first would expose him to the risk of double liability, since he could have avoided the risk by pleading the pending attachments in abatement in that suit.—*Peninsular Const. Co. v. Merritt*, 90 Md. 589, 45 Atl. 172.

(g) Where sellers in an action to reform a contract of sale failed to give a bond, or make the showing that they had property from which damages could be made, as required by Code 1888, art. 16, § 69, the court properly refused to deny the issuance of an injunction to restrain a suit for the price on the ground that the buyers had an adequate remedy at law.—*Conner v. Groh*, 90 Md. 674,

45 Atl. 1024. (See Code 1911, art. 16, § 84.)

(h) Where, in a bill to restrain defendant from asserting title to real property, and from further prosecuting a suit in ejectment, it appears that the grounds relied on for an injunction would be equally available as a defense to the ejectment suit, the court of equity is without jurisdiction.—*Mountain Lake Park Ass'n v. Shartzer*, 83 Md. 10, 34 Atl. 536.

(i) An injunction will not lie, at the suit of a life insurance company, to restrain pending actions at law on policies issued by it, on the ground that they were obtained by fraud, and that the assignments thereof to defendant were also fraudulent, and made without consideration, as the company has an adequate remedy at law.—*Home Life Ins. Co. v. Selig*, 81 Md. 200, 31 Atl. 503. [Cited and annotated in 12 L. R. A. (N. S.) 881, on jurisdiction to cancel policy for fraud, and enjoin action at law thereon.]

(j) Action on a bond will not be enjoined because it was obtained by fraud, that being a defense at law.—*Dorsey v. Monett*, 72 Md. xii, memorandum case, 20 Atl. 196, full report.

(k) Complainant was lessor, and defendants lessees, under a lease for 99 years, renewable forever, reserving an annual rent of \$80. Complainant also held a mortgage on the leasehold. He agreed to buy lumber of defendants, and pay for it by releasing the mortgage, and surrendering one of the two ground rents of \$40 each which he and defendants erroneously supposed were on the property. After the lumber was delivered it was discovered that there was but one ground rent for \$80, instead of two for \$40 each. It was then agreed that the old lease should be surrendered, and the mortgage released, and that new leases should be executed, reserving two rents of \$40 each, and a new mortgage given, complainant agreeing to pay the cost of preparing the necessary papers. This he afterwards refused to do. Held, that defendants could sue him at law to recover the value of the lumber.—*Carswell v. Walsh*, 70 Md. 504, 17 Atl. 335.

(l) To an action for trespass, defendant

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

applied for an injunction because the alleged trespass was committed on land which plaintiff's agent had pointed out to defendant as belonging to defendant. *Held*, that the allegations showed a legal defense.—*Atlantic & G. C. Consol. Coal Co. v. Maryland Coal Co.*, 62 Md. 135. [Cited and annotated in 28 L. R. A. (N. S.) 913, on relief from mistake of law as to effect of instrument.]

(m) Property sold under a creditors' bill had been devised by the debtor to one for life, and at her death to the youngest son of each of two brothers. One of such sons was not made a party to the creditors' bill, and after the death of the life tenant he brought ejectment against the purchaser. *Held*, that a bill to enjoin such action, stating that the son had not been made a party through mistake, and that he had no rights which were not subject to the rights of the creditors, did not show a defense which could not be availed of at law, and injunction would not issue.—*Bowen v. Gent*, 54 Md. 555.

(n) Equity will not enjoin an action at law, when the party seeking the injunction has a good defense at law.—*Bowen v. Gent*, 54 Md. 555.

(o) Though, in an action at law on an award of arbitrators, no extrinsic circumstances can be proved to defeat it, a court of equity will enjoin the action where the arbitrators, after the hearing was closed, received a statement from one of the parties containing items of claim different from any presented at the hearing, and without the knowledge of the other party.—*Sisk v. Garey*, 27 Md. 401.

(p) The mere claim by a third person of a paramount title, not alleged by the bill to be valid, and bringing suit upon that claim against the purchaser, are not sufficient to authorize a court of equity to stay, by injunction, the vendor, who has warranted the title, from proceeding either at law or in equity to collect the unpaid purchase money.—*Gayle v. Fattle*, 14 Md. 69. [Cited and annotated in 7 L. R. A. (N. S.) 464, on injunction against collecting purchase money where title defective.]

(q) Slaves who have been manumitted by will, and who have filed a petition for freedom, may have a temporary injunction

against further proceedings on such petition, against the payment of legacies by the executor, and against the levy of judgments by creditors of testator, so as to enable complainants to establish, on the trial of their petition for freedom, the true condition of the estate and their relation thereto.—*Negro Charles v. Sheriff*, 12 Md. 274. [Cited and annotated in 30 L. R. A. 118, on injunction against execution sales or other proceedings under final process.]

(r) The vendee of land is entitled to restrain the enforcement of the purchase price, on the ground that the title of the grantor was defective.—*Dorsey v. Hobbs*, 10 Md. 412. [Cited and annotated in 7 L. R. A. (N. S.) 450, on injunction against collecting purchase money where title defective.]

(s) A tenant from year to year constructed, at a large expense, a marine railway upon the demised premises, "with," as he alleged, "the knowledge, approbation, and acquiescence, and by the implied leave and license," of his landlord. He also alleged that he would not have constructed it (and the landlord knew it) except upon the faith that he might use it so long as it was fit for use, and that he had repeatedly applied for a more permanent lease, which had been as often refused. The lessor gave him notice to quit. *Held*, that the tenant was not entitled to an injunction to restrain the lessor from proceeding to gain possession of the premises.—*West v. Flannagan*, 4 Md. 36.

(t) A decree to account is for the benefit of all the creditors, and in the nature of a judgment for all, and, such decree being passed, an injunction will be issued on the motion of either party to stay all proceedings of any of the creditors at law.—*Brooks v. Dent*, 4 Md. Ch. 473. [Cited and annotated in 30 L. R. A. 122, on injunction against execution sales or other proceedings under final process.]

(u) After the date of a decree to account on a creditors' bill against an administrator or executor, and on a due disclosure of assets, injunction will be granted on a motion of either party to stay all proceedings of each of the creditors at law.—*Brooks v. Dent*, 4 Md. Ch. 473. [Cited and annotated, see supra.]

(v) Where a party elects to proceed in

equity, he will be restrained from further prosecuting his suit at law without leave of the equity court first had and obtained.—*Union Bank v. Kerr*, 2 Md. Ch. 460.

(w) The power of the Court of Chancery to grant injunctions to restrain creditors from proceeding at law after a decree for an account is not confined to cases in which the application is made by the executor or administrator, but extends to applications made by the heir, or by another creditor, or a common legatee, or by a residuary legatee.—*Boyd v. Harris*, 1 Md. Ch. 466. [Cited and annotated in 30 L. R. A. 140, on injunction against execution sales or other proceedings under final process; in 61 L. R. A. 385, on effect of death after judgment on remedy by execution.]

(x) A decree for an account in a suit by one or more creditors against an executor, either for themselves or on behalf of themselves and other creditors, being for the benefit of all and in the nature of a judgment for all from the date of such decree, an injunction will be granted on motion of either party and on a due disclosure of assets to stay all proceedings of any creditor at law.—*Boyd v. Harris*, 1 Md. Ch. 466. [Cited and annotated, see supra.]

(y) F. purchased of M. & S. their interest in a tract of land, and took from S., then an infant, a bond of conveyance, with security, for the land, conditioned to convey when she became of age. All the purchase money was paid, and F. went into possession of the property. When S. came of age she refused to ratify the sale or repay the purchase money, but brought ejectment in the name of herself and husband to recover possession of her undivided interest. Held, that an injunction would not be granted against such action, since she had a right to rescind her contract.—*Browner v. Franklin*, 4 Gill 463.

(z) Where, after contract for the sale of land, the vendor parts with his entire title to a third party, thereby rendering himself incompetent to complete the sale, a judgment recovered by him on the bond for payment of the purchase price will be perpetually enjoined.—*Buchanan v. Lorman*, 3 Gill 51. [Cited and annotated in 31 L. R. A. 752, on injunction against judgments for de-

fenses existing prior to rendition; in 32 L. R. A. 322, on equitable jurisdiction as to injunctions against judgments; in 7 L. R. A. (N. S.) 450, on injunction against collecting purchase money where title defective.]

(aa) A court of equity has sometimes interposed to prohibit proceedings at law on the ground that, having possessed itself of the general subject by an application for its aid to compel a disclosure or for the exercise of some other admitted jurisdiction, it will dispose of the whole matter and thus avoid a multiplicity of suits.—*Glenn v. Fowler*, 8 G. & J. 340.

(bb) A. devised his real estate to his wife for life, and after her death to his brother C. in fee, charged with the payment of two distinct legacies. C. contracted to convey the land to D. in fee. Indorsed on the contract was this agreement: "It is understood that the legacies charged by the will of A. to be paid out of his real estate are not to be satisfied by D., but that the land is to be exonerated by C. from payment thereof." Held, on a bill filed by D., praying an injunction to stay proceedings on a judgment obtained by C. against D. for the balance of the price due for the land, that the true construction of the indorsed agreement was that the estate itself was to be freed from all liability to pay the legacies with which it was charged, and not merely that D. was to be personally indemnified from their payment, and that, although a difficult agreement for C. to comply with, it was not impossible, and should be performed by him before he could call on D. for the purchase money.—*Dorsey v. Smith*, 7 H. & J. 345. [Cited and annotated in 7 L. R. A. (N. S.) 450, 455, on injunction against collecting purchase money where title defective.]

(cc) Where the vendor of land represented to a third party that the purchase price might be paid by a sale of wood on the premises, and thereby induced such third party to become the vendee's surety, but the vendor afterwards enjoined the sale of the wood, the surety was entitled to enjoin the action on the bond for the purchase price.—*Lynch v. Colegate*, 2 H. & J. 34.

(dd) Where, by misrepresentation, an act of Assembly had been obtained whereby lands previously sold in accordance with a



former act were included in a new grant, it was decreed that the second grantee should release such land to the state by deed, and an ejectment against the claimant under the first act was enjoined.—*State v. Reed*, 4 H. & McH. 6.

### § 27. Particular proceedings or remedies in civil actions.

#### Cross-Reference.

Restraining collection of fee bill, see "Costs," § 273.

#### Annotation.

Injunction against sale under power in mortgage because of overstatement of amount due.—35 L. R. A. (N. S.) 909, note.

Injunction against repeated garnishment of exempt wages.—10 L. R. A. (N. S.) 983, note.

Right to enjoin garnishment of wages because of rule of employer providing for discharge of employees whose wages are garnished.—6 L. R. A. (N. S.) 491, note.

Injunction against execution sales or other proceedings under final process.—30 L. R. A. 99, note.

(a) It is not necessary for a court to issue an injunction to stop trustees, appointed by it to sell property, from selling; but it can do so without an injunction.—*State v. Albert*, 121 Md. 222, 88 Atl. 119.

### § 28. Special proceedings other than actions.

(a) Equity will not enjoin proceedings on a caveat, based on mental incapacity and undue influence; it being without jurisdiction to determine the entire controversy.—*Bradley v. Bradley*, 117 Md. 515, 83 Atl. 446.

### § 29. Defenses to actions or special proceedings.

### § 30. Discontinuance of action or proceeding.

(a) The remedy of one having by agreement with another an interest in any recovery such other may secure in a suit is not to enjoin compromise by such person of such suit, but by action at law against him.—*Hendrix v. Bull*, 111 Md. 389, 74 Atl. 572.

### § 31. Actions or proceedings in same court.

#### Cross-References.

Original or ancillary suit as affecting district in which suit must be brought in federal court, see "Courts," § 268.

Injunction in federal court against prosecution of actions pending therein, see "Courts," § 264.

### § 32. Actions or proceedings in other courts.

#### Cross-References.

Concurrent and conflicting jurisdiction of different federal courts, see "Courts," § 526.

Concurrent and conflicting jurisdiction of state courts, see "Courts," § 480.

Injunction by federal court against proceedings in state court, see "Courts," § 508.

Injunction by state court against proceedings in federal court, see "Courts," § 507.

Power of federal court to restrain proceedings in state court against bankrupt, see "Bankruptcy," § 391.

(a) Courts of equity have authority to restrain persons within their jurisdiction from prosecuting suits either in the courts of the states to which they belong, or in other states.—*Keyser v. Rice*, 47 Md. 203, 28 Am. Rep. 448. [Cited and annotated in 15 L. R. A. (N. S.) 1009, on injunction against suit in other state to evade local exemption laws.]

(b) Courts of equity, on a proper case made, have authority to restrain persons within their jurisdiction from prosecuting suits either in the courts of the states to which they belong, or in other states, or in foreign countries, not because of any right to control or interfere with the proceedings of other tribunals in other states, but on the clear authority vested in equity courts over persons within their jurisdiction.—*Keyser v. Rice*, 47 Md. 203, 28 Am. Rep. 448. [Cited and annotated, see *supra*.]

### § 33. Actions or proceedings in other states or countries.

#### Cross-References.

Concurrent and conflicting jurisdiction of courts of different states or countries, see "Courts," § 516.

Proceedings infringing right of exemption, see "Exemptions," § 141.

Proceedings in insolvency, see "Insolvency," § 70.

#### Annotation.

Injunction against action or proceedings in foreign jurisdiction.—21 L. R. A. 71; 25 L. R. A. (N. S.) 267, notes.

(a) Where the transactions out of which

an alleged debt arose occurred in Maryland, and are within the statute prohibiting gambling, and both parties are citizens and residents of that state, a court of equity of Maryland will restrain the creditor from proceeding against the debtor in another state to which the creditor has resorted to evade the Maryland laws prohibiting imprisonment for debt, where the foreign court must, through imperfect methods of proof, ascertain the statute on which the debtor relies to avoid the transactions, and where there must be difficulty and expense in obtaining evidence.—*Miller v. Gittings*, 85 Md. 601, 37 Atl. 372, 37 L. R. A. 654, 60 Am. St. Rep. 352. [Cited and annotated in 25 L. R. A. (N. S.) 269, on injunction against action or proceeding in foreign jurisdiction.]

(b) Where a citizen of Maryland presents an attachment against another citizen of Maryland, both at the time being in West Virginia, and garnishes a railroad company, which at the time was indebted to defendant for wages which were exempt under the laws of Maryland, the action will be enjoined at the suit of defendant.—*Keyser v. Rice*, 47 Md. 203, 28 Am. Rep. 448. [Cited and annotated, see *supra*, § 32.]

(c) On a proper case being made, courts of equity have authority to restrain persons within their jurisdiction from prosecuting suits in other states or in foreign countries.—*Keyser v. Rice*, 47 Md. 203, 28 Am. Rep. 448. [Cited and annotated, see *supra*, § 32.]

## (B) PROPERTY, CONVEYANCES, AND INCUMBRANCES.

### Cross-References.

See "Copyrights," §§ 85, 86; "Easements," § 61; "Mines and Minerals," § 52; "Patents," §§ 294-308, 317; "Trade-Marks and Trade-Names," §§ 95, 97.  
Criminal acts in general, see post, § 103.  
Encroachment on fishing rights, see "Fish," § 10.  
Gas, interference with gas works, see "Gas," § 21; shutting off gas supply, see "Gas," § 12; right to supply gas to private consumers, see "Gas," § 13.  
Homestead rights, see "Homestead," § 209.  
Interference by third persons with property of bankrupt, see "Bankruptcy," §§ 104, 105.  
Interference with ferry franchise, see "Ferries," § 19.  
Interference with leased property, injunction by owner, see "Landlord and Tenant," § 54.

Interference with license in respect to real property by licensor, see "Licenses," § 55.

Interference with possession of receiver, see "Receivers," § 73.

Interference with rights under mining lease, see "Mines and Minerals," § 81.

Nuisances, see "Health," § 19; "Municipal Corporations," § 846; "Nuisance," §§ 18-40, 75, 77-88.

Nuisances affecting enjoyment of leased property, see "Landlord and Tenant," § 142.

Obstruction of private road, see "Private Roads," § 9.

Removal of fixtures by tenant, see "Landlord and Tenant," § 160.

Removal of lateral support, see "Adjoining Landowners," §§ 3, 4.

Removal of private crossing over railroad, see "Railroads," § 104.

Removal of railroad stations, see "Railroads," § 60.

Removal of telephone, see "Telegraphs and Telephones," § 28.

Rights of claimants of public lands pending contest in general land office, see "Public Lands," § 103.

Use of easement, see "Easements," § 55.

Use of wharf or pier, see "Navigable Waters," § 43.

Waters and water courses, injuries to works used in irrigation enterprises, see "Waters and Water Courses," § 264; interference with wells, springs, or percolating waters, see "Waters and Water Courses," § 107; interference with rights in general, see "Waters and Water Courses," §§ 33, 152, 158½, 247; obstruction or detention of water course, see "Waters and Water Courses," § 61; pollution of municipal water supply, see "Waters and Water Courses," § 196; pollution of water course, see "Waters and Water Courses," § 75; interference with riparian rights, see "Waters and Water Courses," § 49; artificial ponds, reservoirs, channels and dams, see "Waters and Water Courses," § 177; interference with bed of stream, see "Waters and Water Courses," § 98; interference with lakes or ponds, see "Waters and Water Courses," § 114; flowage of land by surface water, see "Waters and Water Courses," § 124; diversion of water course, see "Waters and Water Courses," § 85; shutting off water for nonpayment of charges, see "Waters and Water Courses," § 203.

Waters of navigable lake or stream, pollution of, see "Navigable Waters," §§ 35, 40.

## § 34. Property and rights protected in general.

(a) An injunction will not be allowed to prevent the obstruction of a right to allow water falling from the eaves of a man's house to run upon his neighbor's land, unless such obstruction would inflict an import-

ant and irreparable injury.—*Cherry v. Stein*, 11 Md. 1. [Cited and annotated in 22 L. R. A. 536, 539, on easements of light, air and prospect.]

(b) Where streets are obstructed by the grantor of lots bounded thereby, so as to prevent their use, the owner of such lots, in order to entitle him to an injunction, must show that the obstruction complained of works to his great injury, in manifest violation of the obligations of his grantor.—*White v. Flannigain*, 1 Md. 525, 54 Am. Dec. 668. [Cited and annotated in 7 L. R. A. (N. S.) 75, 78, on injunctive relief as to fences or gates; in 14 L. R. A. (N. S.) 883, on effect on grantee's rights of call in deed for street or alley owned by grantor in fee.]

(c) Where a vendor of a lot within city limits, in the conveyance, bounds it by streets designated as such in the conveyance, or on a map made by the city or by the owner of the property, any obstruction by the grantor which denies the use of this particular right of way as a street works irreparable mischief, and entitles the grantee to relief by injunction.—*White v. Flannigain*, 1 Md. 525, 54 Am. Dec. 668. [Cited and annotated, see supra.]

### § 35. Title or possession to support suit.

(a) Where, in a bill to restrain defendant's use of a drain as a trespass, complainant alleged that she was in possession of certain property as a life tenant, to which the drain was appurtenant, and that defendant's use of the drain was especially injurious to her because her property, being of a lower elevation, received all the overflow from the drain if it became overcharged, the bill was not demurrable for failure to allege the source of plaintiff's title, etc.; she being entitled to maintain the same because of injury to her possessory rights.—*Didier v. Merryman*, 114 Md. 434, 79 Atl. 597.

(b) Act 1902, p. 445, c. 333, authorized the mayor and city council of the city of Baltimore to create a loan for the purpose of extending the water service and constructing a reservoir, and thereafter an ordinance of estimates authorizing the use of a certain portion of the water loan for the purchase of land for a new reservoir, and the city contracted with the owners of land to purchase the same for the reservoir. Subsequently

an ordinance was passed repealing the mentioned portion of the ordinance of estimates, and the vendees in the contract sued for an injunction restraining the city from enforcing the repealing ordinance until the determination of an appeal from an order setting aside the sale of the land to the complainants by certain trustees. *Held*, that complainants were not entitled to the injunction, it appearing that their only title to the land was an equitable one, acquired under a sale by trustees, which title had been extinguished by an order setting aside the sale.—*Callaway v. City of Baltimore*, 99 Md. 315, 57 Atl. 661.

### § 36. Title or right in doubt or dispute.

#### Cross-Reference.

Preliminary injunction, see post, § 137.

(a) Where the contention between the parties related to defendant's right to erect an awning post at a certain place, and depended on the true construction of title deeds under which the respective parties claimed, on the exact location thereof, and on questions of adverse holding and user by the holders of the respective premises, injunction would not lie to restrain the erection; the remedy at law being adequate.—*Whalen v. Dalashmutt*, 59 Md. 250.

(b) An injunction will not be granted where the right is doubtful.—*Cherry v. Stein*, 11 Md. 1. [Cited and annotated, see supra, § 34.]

(c) Where the title to the land is disputed, an injunction against a trespass thereon will not be granted.—*Chesapeake & O. Canal Co. v. Young*, 3 Md. 480.

(d) An injunction will not lie to restrain a party in possession who claims title, and who expressly denies all title on the part of the complainant, either legal or equitable.—*Chesapeake & O. Canal Co. v. Young*, 3 Md. 480.

### § 37. Establishment of title or right by action at law.

#### Cross-Reference.

As prerequisite to mandatory injunction, see ante, § 5.

(a) Though, when the title relied on is controverted, and it appears that there is some ground for the objection, a court of

equity, in a suit seeking relief by injunction as a determinative and not as an ancillary remedy, will not interfere, except for temporary protective purposes, till the question of legal title can be decided by a court of law, yet, where there is no denial of the claimed right to easement in an alley, except on a theory opposed to the terms of an express grant, a preliminary proceeding at law is unnecessary.—*Oberheim v. Reeside*, 116 Md. 265, 81 Atl. 590.

(b) The proper course, when an injunction is applied for and the legal title is doubtful, is to send the complainant to a court of law to have his title first established.—*Chesapeake & O. Canal Co. v. Young*, 3 Md. 480.

### § 38. Protection pending litigation as to title or right.

#### Cross-Reference.

Actions and proceedings in aid of which injunction is authorized, see ante, § 3.

(a) A grantor of land sued in equity to set aside the deed on the ground of fraud, etc., and was defeated. Subsequently he sued to enjoin the grantees from trespassing on the property, and the plaintiff contended an injunction should be awarded, and retained until the question of title could be settled at law. *Held*, that the question had been adjudicated.—*Tifel v. Jenkins*, 95 Md. 665, 53 Atl. 429.

(b) Where certain creditors filed a bill to set aside a deed of trust executed by their debtor, injunction could issue to restrain attachment proceedings by other creditors until the determination of the first bill, saving to them the benefit of their attachment liens in the event of the deed being finally vacated.—*Laupheimer v. Rosenbaum*, 25 Md. 219.

(c) If a controversy involving the title to land be pending in equity, an injunction to stay waste may be granted on petition filed in the cause.—*Green v. Keen*, 4 Md. 98. [Cited and annotated in 22 L. R. A. 235, 238, on injunction against trespass to cut timber.]

(d) The Court of Chancery will grant an injunction to stay waste, pending a suit at law to try the title to the land.—*Duvall v. Waters*, 1 Bland 569, 18 Am. Dec. 350.

[Cited and annotated in 22 L. R. A. 238, on injunction against trespass to cut timber.]

(e) An injunction against the commission of a trespass will not be granted, pending proceedings at law to try the right to property, except in case irreparable damage would otherwise occur.—*Amelung v. Seekamp*, 9 G. & J. 468. [Cited and annotated in 22 L. R. A. 238, on injunction against trespass to cut timber.]

### § 39. Conveyance or disposition in general.

#### Cross-References.

Pending foreclosure of mortgage, see "Chattel Mortgages," § 281; "Mortgages," § 465½.

Pending supplementary proceedings, see "Execution," § 390.

Sale of assets of assignor for benefit of creditors, see "Assignments for Benefit of Creditors," § 241.

Sale of corporate stock, see "Corporations," § 111.

Sale of property of decedent, see "Executors and Administrators," § 357.

Sale of theater tickets by speculators, see "Theaters and Shows," § 4.

Sale on foreclosure, see "Mortgages," § 504.

Sale, removal or use of property subject to landlord's lien, see "Landlord and Tenant," § 251.

Sale under deed of trust, see "Building and Loan Associations," §§ 38, 39.

Transfer of lease, see "Landlord and Tenant," § 79.

(a) Equity cannot enjoin an insolvent defendant, who is indebted to plaintiff, from disposing of a particular fund, where plaintiff has no lien by judgment or otherwise.—*Frederick County Nat. Bank v. Shafer*, 87 Md. 54, 39 Atl. 320.

(b) Where property subject to a mechanic's lien and to mortgages was conveyed by the owner to trustees for creditors, the sale of the property by the trustees, advertised as "free from all incumbrances," will be restricted by injunction to a sale of their equitable interests in the land, subject to the prior liens.—*Brick Co. v. Robinson*, 55 Md. 410.

(c) Where a judgment creditor was seeking to realize on his debtor's equity of redemption in certain personal property, injunction was issuable to restrain him and his mortgagee from selling, removing, or disposing of the same pending the proceedings.—*Myers v. Amey*, 21 Md. 302.

(d) After decree for a sale of real property, a sale reported by the trustee, and exceptions filed to its ratification, a party interested in the proceeds of the sale applied for an injunction, on the ground that the reported purchaser, without the sanction of the court or those interested, had assumed the power to rent the property, and that it was about to be used by his lessee. *Held*, that as it was not alleged that the property was subject to waste in the hands of the purchaser or his lessee, or that its preservation was endangered by the disposition which the reported purchaser had made of it, the injunction should not be granted.—*Wagner v. Cohen*, 6 Gill 97, 45 Am. Dec. 660.

**§ 40. Transfer or pledge of corporate stock.**

**§ 41. Transfer or pledge of instruments or securities for payment of money.**

*Cross-Reference.*

Injunction in aid of other action, see ante, § 3.

(a) The complainant filed a bill to charge certain property with a resulting trust in his favor by reason of his supplying \$850 to Mrs. S. to complete the purchase money due by her, or with an equitable mortgage based on the parol promise and agreement of Mrs. S. and her husband that complainant should be fully secured by a lien on the land, either by mortgage or in some other form, as might be deemed most effectual. It was alleged and proved that the complainant afterwards, in order to secure the money advanced, agreed to purchase the property, and took a deed of the same from Mrs. S. alone, in the absence of her husband, although the deed to Mrs. S. was not for her sole and separate use. The complainant in return gave four promissory notes of \$500 each. Mr. S. afterwards alleged that the deed was void because of his not having joined in its execution, and he and his wife joined in conveying the property to B., who had notice of the advance made to Mrs. S. by complainant, but not of the agreement that complainant should have a lien on the property. *Held*, that complainant was entitled to an

injunction against the transfer of such notes.—*Six v. Shaner*, 26 Md. 415.

**§ 42. Dealing in tickets of carriers.**

**§ 43. Collection or payment of money.**

*Cross-Reference.*

Restraining payment of deposit, see "Banks and Banking," § 225.

*Annotation.*

Injunction against collection of purchase money where title to land is defective.—7 L. R. A. (N. S.) 448, note.

**§ 44. Fraudulent conveyances and transactions.**

*Cross-References.*

By husband to avoid payment of alimony, see "Divorce," § 206.

By or to judgment debtor pending creditors' suit, see "Creditors' Suit," § 32.

Remedy in suit to set aside fraudulent transfer, see "Fraudulent Conveyances," § 304.

*Annotation.*

Right to injunction during lifetime of one who has conveyed or is about to convey property in violation of agreement to leave same at his death to complainant.—18 L. R. A. (N. S.) 218, note.

Right to injunction against transfer by husband in fraud of wife's support.—18 L. R. A. (N. S.) 1156, note.

Surety's right prior to obtaining a judgment or lien to enjoin principal's transfer of property to defraud him.—15 L. R. A. (N. S.) 484, note.

Injunction against execution sales of fraudulent purchasers.—30 L. R. A. 114, note.

(a) A creditor cannot, before judgment, maintain a bill for an injunction to prevent a debtor from disposing of his property in fraud of creditors.—*Balls v. Balls*, 69 Md. 388, 16 Atl. 18. [Cited and annotated in 23 L. R. A. (N. S.) 27, 34, 37, 116, on conditions precedent to equitable remedies of creditors.]

(b) The complainants alleged in a bill for an injunction that C., fraudulently combining with M. to prevent them from obtaining satisfaction of a judgment against C., executed a bill of sale of his stock in trade, goods, etc., in his store and dwelling for a pretended consideration of \$625.90, and that the bill was executed in bad faith, even if a certain part of this consideration was paid, being intended to cheat the complainants, and hinder them from obtaining the payment of their debt. Also, that C. held the property, notwithstanding the bill of sale,

and continued to use it as his own, and to devote the proceeds to his own use; and that the complainants could not discover any other property which belonged to C., except that in question. *Held*, that the allegations were sufficient to warrant an injunction by which C. and M., and all their agents and employees, were to be enjoined not to sell, dispose of, or remove any of the said property, etc.—*Conolly v. Riley*, 25 Md. 402.

(c) A bill in equity set forth that one of the defendants, by false pretenses of solvency, obtained goods on credit from complainants; that other defendants assisted him in the deception, and afterwards by a fraudulent combination with him, to the prejudice of other creditors, and to cover antecedent claims of their own upon him, obtained the goods from him and designed to sell them at auction at a great sacrifice; that complainant's remedy by replevin had been taken away, except as to a small portion of the goods, by acts of the defendants in altering marks, etc. *Held*, that this presented proper ground for equity jurisdiction, and that an injunction might be properly ordered, and was necessary as ancillary to a petition in the bill to avoid the transfer.—*Hyde v. Ellery*, 18 Md. 496. [*Cited and annotated* in 36 L. R. A. 346, 348, on creditor's right to buy property from debtor to satisfy debt.]

(d) A bill charged that one of the defendants, by false representations as to his solvency, induced complainant and other merchants to sell him a large amount of goods, and that the other defendants, in order to defraud complainants and secure their own antecedent debts, obtained a transfer of the goods to them, and placed them in the hands of auctioneers to be sold at auction; that complainants were unable to use their remedy by replevin because of intermixture and change of marks, rendering it impossible to identify the goods. *Held*, that, owing to the difficulty of identifying the goods and the multiplicity of suits which would be necessary to recover them after an auction sale, injunction would lie to prevent the sale.—*Hyde v. Ellery*, 18 Md. 496. [*Cited and annotated*, see *supra*.]

(e) A bill by a creditor, charging that his debtor fraudulently executed a bond without consideration, upon which he is about to confess judgment for the purpose of defeating his creditors, justifies the granting of an injunction to restrain proceedings on such bond.—*Mahaney v. Lazier*, 16 Md. 69. [*Cited and annotated* in 30 L. R. A. 236, on injunction against judgments by confession.]

(f) A bill by a creditor who has not reduced his claim to judgment and execution, nor in any other manner acquired a lien upon his debtor's property, alleging that the debtor is selling his goods and applying the proceeds to his own use and the use of others without consideration, and thus, and in other ways, is wasting his resources, and is sending large quantities of his goods beyond the reach of his creditors, and is utterly insolvent, does not make a case for the interposition of a court of equity to restrain, by injunction, the debtor in the enjoyment and power of disposition of his property.—*Rich v. Levy*, 16 Md. 74. [*Cited and annotated* in 23 L. R. A. (N. S.) 19, on conditions precedent to equitable remedies of creditors.]

(g) A bill filed by a creditor against his debtor, alleging, in substance, that the complainant fears and believes that it is the purpose of the defendant to perpetrate a fraud upon him by placing his effects beyond his reach before the complainant can obtain a judgment on his claims, does not authorize the granting of an injunction.—*Hubbard v. Hubbard*, 14 Md. 356.

(h) A bill setting out a promise by the defendant to give a mortgage of all his stock in trade, and charging that he now refuses to fulfill his promise, and is selling his stock, and the complainant, being a large creditor, fears to lose his security, shows an equitable lien, and will authorize an injunction.—*Triebert v. Burgess*, 11 Md. 452. [*Cited and annotated* in 2 L. R. A. (N. S.) 222, on uncertainty as to time as affecting right to specific performance; in 6 L. R. A. (N. S.) 588, on specific performance of contract to give surety.]

(i) A bill filed by the partnership creditor charged that the partnership effects had been misapplied, and appropriated to the private purposes of the partners, by which the creditors had been delayed, hindered,

and defrauded; that the firm was insolvent; that a dissolution or pretended dissolution of the firm and a transfer of the goods of the firm to defraud the creditors, and an appropriation of the effects to the private purposes of the partners was designed; and that, unless they were arrested in the prosecution of this purpose, the complainant will sustain great and irreparable injury. *Held*, that the allegations were sufficient to justify the issue of an injunction to restrain the sale of all the partnership effects included in the transfers among the partners which are alleged to be fraudulent, and which can be found in the control of either partner.—*Sanderson v. Stockdale*, 11 Md. 563. [Cited and annotated in 29 L. R. A. 682, on firm assumption of partner's individual debts; in 23 L. R. A. (N. S.) 116, on conditions precedent to equitable remedies of creditors.]

(j) A bill, alleging merely that a defendant is indebted to the plaintiffs, and that he is disposing of his property and collecting the amount due, and is secreting same with intent to defraud his creditors and with the intention of absconding, does not entitle plaintiff to an injunction restraining him from disposing of his property.—*Uhl v. Dillon*, 10 Md. 500, 69 Am. Dec. 172. [Cited and annotated in 23 L. R. A. (N. S.) 17, on conditions precedent to equitable remedies of creditors.]

#### § 45. Trespass or other injury to real property.

##### Cross-References.

See ante, § 14.

Mandatory injunction, see ante, § 5.

Threatened trespass, see ante, § 11.

By defects or obstructions in drains, see "Drains," § 68.

By mining, see "Mines and Minerals," §§ 52, 125.

By operation of gas and oil wells, see "Mines and Minerals," §§ 121-125.

Encroachment on adjoining land, see "Adjoining Landowners," § 9.

Threatened cloud on title, see "Quieting Title," § 8.

To cemetery, see "Cemeteries," §§ 20, 21.

To easement, see "Easements," § 61.

To land of ferry company, see "Ferries," § 8.

To land subject to lien for taxes, see "Taxation," § 514½.

To public lands, see "Public Lands," §§ 17, 19.

To rented land, see "Landlord and Tenant," § 55.

#### § 46.—Trespasses in general.

(a) A suit in equity will not lie to enjoin a

mere threatened trespass, without elements of damage which could not be redressed by an action at law.—*Carswell v. Swindell*, 102 Md. 636, 62 Atl. 956. [Cited and annotated in 12 L. R. A. (N. S.) 60, on effect of legal remedy on equitable jurisdiction to remove cloud.]

(b) The mere entry upon and the use of land for the purpose of constructing a stone culvert over a rise cannot be said to be a trespass of such character as to entitle the owner to a writ of injunction, as in no sense could the injury to be apprehended be considered as irreparable.—*Nicodemus v. Nicodemus*, 41 Md. 529.

(c) Although a court of equity will not grant an injunction to restrain a trespasser merely because he is a trespasser, yet the court will interfere where the injury is irreparable, or where the trespass goes to the destruction of the property in the character in which said property has been held and enjoyed, or where there is a necessity for preventing a multiplicity of suits, as, where the injunction is sought for the purpose of restraining persons from interfering with public worship.—*Gilbert v. Arnold*, 30 Md. 29. [Cited and annotated in 3 L. R. A. (N. S.) 864, on enjoining control, use of, or interference with, church property; in 13 L. R. A. (N. S.) 175, on injunction against repeated trespass.]

(d) A bill for injunction, filed by a widow and her children, charging against defendant an unlawful and violent entry on land devised to her by her deceased husband for the support of herself and children, and a taking of the products thereof, and depriving complainants of their means of support and maintenance, does not show that the injury committed would be irreparable, so as to justify the granting of an injunction.—*Pfultz v. Pfultz*, 14 Md. 376. [Cited and annotated in 20 L. R. A. 169, on power to grant mandatory injunctions.]

(e) Injunction will not lie to restrain a mere trespass unless irreparable injury would be done thereby.—*Duvall v. Waters*, 1 Bland 569, 18 Am. Dec. 350. [Cited and annotated in 22 L. R. A. 238, on injunction against trespass to cut timber.] *Carlisle v. Stevenson*, 3 Md. Ch. 499. [Cited and annotated in 20 L. R. A. 164, on power to grant mandatory injunctions; in 13 L. R. A. (N. S.) 175, on injunction against repeated tres-

pass.] *Cherry v. Stein*, 11 Md. 1. [Cited and annotated in 22 L. R. A. 586, 589, on easements of light, air and prospect.]

(f) Where the acts done or threatened are ruinous to the property, or are of a character to permanently impair its just enjoyment in the future, an injunction will be granted against them.—*Shipley v. Ritter*, 7 Md. 408. [Cited and annotated in 22 L. R. A. 235, on injunction against trespass to cut timber.]

(g) Where complainant seeks an injunction against a trespass, the fact that he will be remediless if forced into a court of law because he has not a legal title will not entitle him to an injunction.—*Chesapeake & O. Canal Co. v. Young*, 3 Md. 480.

(h) As between strangers or parties claiming adversely, there is no distinction between trespass and waste; and in both cases the injury must be shown to be irreparable before a court of equity will grant an injunction.—*George's Creek Coal & Iron Co. v. Detmold*, 1 Md. Ch. 371.

(i) An injunction may be granted to prevent a contemplated trespass, where the injury would be irreparable and such as cannot be compensated in damages.—*George's Creek Coal & Iron Co. v. Detmold*, 1 Md. Ch. 371.

(j) A bill will not lie to enjoin defendants from committing a trespass in the absence of insolvency or other facts requiring equitable interference.—*Hamilton v. Ely*, 4 Gill 34. [Cited and annotated in 22 L. R. A. 238, on injunction against trespass to cut timber; in 13 L. R. A. (N. S.) 176, on injunction against repeated trespass.]

#### § 47.—Claim of right.

(a) Acts of defendants in claiming and asserting title to land, in entering upon the same, denying plaintiff's title, and threatening to again enter upon the land and destroy a building thereon, are not of themselves sufficient grounds to authorize the issuance of an injunction.—*Carswell v. Swindell*, 102 Md. 636, 62 Atl. 956. [Cited and annotated, see supra, § 46.]

#### § 48.—Repeated or continuing trespasses.

##### Annotation.

Injunction to prevent trespass of animals or fowls.—48 L. R. A. (N. S.) 179, note.

Injunction against repeated trespass.—13 L. R. A. (N. S.) 173; 21 L. R. A. (N. S.) 417, notes.

(a) In a suit to restrain defendant's connection with a drain appurtenant to plaintiff's premises, the complaint described the conditions existing prior to defendant's use of the drain, and showed that the capacity of the drain was then overtaxed; that repeated stoppages and overflows had occurred producing special damage to her by reason of the lower grade of her property as compared with the adjoining premises, and then charged that defendant's wrongful and extensive appropriation of the use of the drain had increased its liability to become choked and to discharge its contents on plaintiff's lot, and that she was thus exposed to danger of recurring nuisances. Held, that complainant in such case had no adequate remedy at law.—*Didier v. Merryman*, 114 Md. 434, 79 Atl. 597.

(b) Where defendant had constructed a passageway over a street so as to shut out the light from plaintiffs' premises, the nuisance was a continuing one, so that plaintiffs' remedy at law could only have been by a succession of suits for damages not affording adequate redress, and they were entitled to relief by injunction.—*Townsend v. Epstein*, 93 Md. 537, 49 Atl. 629, 52 L. R. A. 409, 86 Am. St. Rep. 441. [Cited and annotated in 22 L. R. A. (N. S.) 24, on judicial power over eminent domain; in 48 L. R. A. (N. S.) 174, on special damage from awning or structure overhanging street, which will sustain private action to abate nuisance; in 36 L. R. A. (N. S.) 1116, on right of abutter to compensation for vacation of highway; in 23 L. R. A. (N. S.) 159, on right of municipality, without express power, to permit overhead bridge across street.]

(c) Injunction will lie to prevent repeated trespasses.—*Gilbert v. Arnold*, 30 Md. 29. [Cited and annotated, see supra, § 46.]

(d) That the injury may be continuous as suffering a ditch to be out of repair and flooding complainant's land, does not prove that it may not be adequately compensated for at law; but, if an action has been brought at law, and damages have been recovered, and the defendant still persists in permitting the ditch to remain defective, an injunction will be granted, as it can then be seen that the remedy at law is inadequate.—*Carlisle*



*v. Stevenson*, 3 Md. Ch. 499. [Cited and annotated, see supra, § 46.]

(e) On a bill for an injunction, the fact that the trespass complained of may be continuous does not prove that it is not susceptible of adequate compensation in damages by an action at law.—*Carlisle v. Stevenson*, 3 Md. Ch. 499. [Cited and annotated, see supra, § 46.]

(f) A bill in equity was filed by tenants in fee, alleging that the defendants, confederating together, entered upon their land, cut down large quantities of wood, quarried large quantities of limestone, are continuing to cut down wood and quarry stone, and design to remove the same, and that they have instituted actions of trespass *quare clausum fregit* for the said acts, which are now pending; but they did not allege that the trespass was to the destruction of the inheritance, or the mischief irreparable. Held, that an injunction would not be granted upon such a bill to restrain further acts of trespass or waste.—*Hamilton v. Ely*, 4 Gill 34. [Cited and annotated, see supra, § 46.]

#### § 49.—Permanent occupation or injury.

(a) Where possession of leased property is taken from the tenant by one who has conspired with the landlord and a sublessee as a tenant, injunction will lie to restrain his continued occupation on the ground that it will prevent a multiplicity of suits.—*Chesapeake Brewing Co. v. Mt. Vernon Brewing Co.*, 107 Md. 528, 68 Atl. 1046.

(b) A railroad company took possession of a city lot, and was using it for purposes connected with the construction of a tunnel. Held, that the owner of the lot was entitled to an injunction as the purpose to which the lot was applied by the railroad company was a trespass which went to the destruction of the property in the character in which it was enjoyed by such owner.—*Baltimore Belt R. Co. v. Lee*, 75 Md. 596, 23 Atl. 901.

(c) Where one railroad made a crossing over another forcibly and against the consent of the latter, without a written agreement conferring the easement on it, and without legal proceedings, an injunction was

issued to restrain it from using such crossing.—*Pennsylvania R. Co. v. Consolidation Coal Co.*, 55 Md. 158.

(d) Where the relation of landlord and tenant existed between complainant and defendant, and defendant failed or refused to redeliver possession, the remedy was at law, and not in equity by injunction.—*Hubbard v. Mobray*, 20 Md. 165. [Cited and annotated in 39 L. R. A. (N. S.) 35, on right to preliminary injunction having effect of transferring possession of property.]

(e) A testator, being seised of a legal estate in fee in certain land, devised the same to his widow during her widowhood, or until their youngest child attained the age of 21 years, for the support of herself and their children, with remainder to the children in fee, subject to the dower of the widow. Upon a bill filed by the widow and the children, charging against the defendant an unlawful and violent entry upon the land, taking the products thereof, and depriving the complainants of their means of support and maintenance, and praying that he might be compelled to surrender the land to them, and for an injunction and a receiver of the rents and profits *pendente lite*, it was held that the facts charged in the bill did not show that the defendant was committing irreparable damage to the property, to prevent which an injunction was necessary.—*Pfeltz v. Pfeltz*, 14 Md. 376. [Cited and annotated in 20 L. R. A. 169, on power to grant mandatory injunctions.]

(f) Also held that the case presented by the bill was proper for redress at law, where the remedy was ample and complete, either by action of trespass, ejectment, or, under the statutes, for a forcible entry, and in such case a court of equity could not rightfully interfere.—*Pfeltz v. Pfeltz*, 14 Md. 376. [Cited and annotated, see supra.]

(g) A court of equity has authority to grant an injunction directing the delivery of the possession of property.—*McKomb v. Kankey*, 1 Bland 363, note.

#### § 50.—Encroachments by buildings or other structures.

##### Cross-References.

Damages instead of injunction, see post, § 195.

Other relief granted, see post, § 194.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

*Annotation.*

Mandatory injunction to compel the removal of a structure which encroaches on adjoining property.—36 L. R. A. (N. S.) 402, note.

(a) Injunction will lie to restrain a lot owner in erecting a house, from taking possession of a portion of an adjoining lot, thereby reducing its frontage from 5 to 8 inches.—*Long v. Ragan*, 94 Md. 462, 51 Atl. 181.

(b) An injunction should not be granted to restrain defendant from erecting an iron post to support an awning frame upon land claimed by complainant; it not appearing why the trespass, if any, cannot be compensated by damages obtained at law.—*Whalen v. Dalashmutt*, 59 Md. 250.

(c) Digging deep holes, and planting therein large stone pillars or abutments, digging and carrying away large banks of valuable clay, and constructing an aqueduct by ditches and embankments through, and thus permanently dividing, the complainant's land, are acts which, if done without authority of law, would present a case of irreparable damage, authorizing the interference of a court of equity by injunction.—*Reddall v. Bryan*, 14 Md. 444, 74 Am. Dec. 550. [Cited and annotated in 46 L. R. A. (N. S.) 1075, on right to exercise eminent domain as affected by fact that principal benefit will be derived out of state; in 58 L. R. A. 242, on acquisition of water supply by eminent domain; in 7 L. R. A. (N. S.) 52, on injunctive relief as to fences or gates; in 22 L. R. A. (N. S.) 24, 156, 157, on judicial power over eminent domain.]

(d) Though an injunction will not be granted to restrain the commission of a mere trespass upon land, where the injury is not irreparable and destructive to the estate, yet if the trespass goes to the destruction of the estate, or be not susceptible of adequate pecuniary compensation, or if the acts done or threatened be ruinous or irreparable, or impair the proper enjoyment of the estate in futuro, an injunction will be granted.—*Herr v. Bierbower*, 3 Md. Ch. 456. [Cited and annotated in 7 L. R. A. (N. S.) 56, on injunctive relief as to fences or gates.]

(e) The taking possession of a city building lot, and digging and laying a foundation upon it for one side of a building that is to stand mostly on an adjoining lot, thus re-

ducing the front of the lot so that the complainant cannot build upon it in the most advantageous manner, goes to the destruction pro tanto of the estate, and will be restrained by injunction.—*Herr v. Bierbower*, 3 Md. Ch. 456. [Cited and annotated, see supra.]

### § 51.— Removal of buildings, fences, or other structures.

*Cross-Reference.*

By tenant, see "Landlord and Tenant," § 160.

*Annotation.*

Injunction, on grounds of trespass, to compel or prevent the erection, maintenance, or removal of fences or gates.—7 L. R. A. (N. S.) 50, note.

(a) The law will not permit a city to remove buildings on the ground that they are embraced within a public street where the right is doubtful, or where it would be against equity and good conscience.—*Whittington v. Commissioners of Crisfield*, 121 Md. 387, 88 Atl. 232.

### § 52.— Cutting or removal of timber.

*Cross-References.*

From mortgaged premises, see "Mortgages," § 196.

By joint owner, see "Joint Tenancy," § 10.

*Annotation.*

Injunction against trespass to cut timber.—22 L. R. A. 233; 43 L. R. A. (N. S.) 262, notes.

(a) Where the trespass complained of goes to the destruction of that which is essential to the value of the estate, as the destruction of timber, an injunction is authorized.—*Fulton v. Harman*, 44 Md. 251. [Cited and annotated in 22 L. R. A. 238, on injunction against trespass to cut timber.]

(b) Where adequate compensation for the destruction of trees can be obtained by an action at law, an injunction will not be granted to enjoin the cutting thereof.—*Powell v. Rawlings*, 38 Md. 239. [Cited and annotated in 22 L. R. A. 234, on injunction against trespass to cut timber.]

(c) Acts which would result in the destruction of all the timber on a man's home plantation where wood and timber are necessary to the enjoyment of the property in that character, are sufficient to authorize an injunction to restrain the cutting of such wood and timber.—*Davis v. Reed*, 14 Md. 152. [Cited and annotated in 22 L. R. A. 235, on injunction against trespass to cut timber.]

(d) The jurisdiction of a court of equity to grant an injunction against the destruction of ornamental or fruit trees does not depend on their value as wood or timber, but on their location as part of the estate, rendering it more valuable by the use to which they are or may be put.—*Shipley v. Ritter*, 7 Md. 408, 61 Am. Dec. 371. [Cited and annotated in 22 L. R. A. 235, on injunction against trespass to cut timber.]

(e) A court of equity will grant an injunction to prevent the destruction of timber, ornamental or fruit trees, whether such trees were planted for shade and ornament or grew naturally in the position which renders them thus valuable to the owner.—*Shipley v. Ritter*, 7 Md. 408, 61 Am. Dec. 371. [Cited and annotated, see supra.]

(f) Pending a creditors' bill to subject the real estate of the deceased debtor, the court will restrain the heirs, by injunction, from cutting and carrying away timber from the land, to prevent a loss to the creditors.—*Tessier v. Wyse*, 3 Bland 28.

#### § 53.—Destruction or removal of crops.

#### § 54. Injury to personal property.

(a) Though trespass would lie in case of the unauthorized interference with a gas company's meters, yet, where the acts complained of are numerous and continuous, equity will assume jurisdiction, to avoid a multiplicity of suits.—*Blondell v. Consolidated Gas Co.*, 89 Md. 732, 43 Atl. 817, 46 L. R. A. 187; *Consolidated Gas Co. v. Blondell*, Id. [Cited and annotated in 13 L. R. A. (N. S.) 179, on injunction against repeated trespass.]

#### § 55. Injury to trade or business.

##### Cross-References.

Boycotts and other combinations, see post, § 101.

Interference with occupation, see post, § 99.

Restraining police officers from interfering with business, see post, § 77.

Slander, see post, § 98.

Protection of market quotations, see "Exchanges," § 13.

Use of trade-mark or trade-name, see "Trade-Marks and Trade-Names," §§ 95, 97.

##### Annotation.

Right, in absence of negative covenant, to enjoin former employee from soliciting business from customers of employer.—31 L. R. A. (N. S.) 260, note.

(a) A landlord leased premises for a term of years for saloon purposes. The tenant, a brewer, sublet the premises to one who agreed to sell only the liquor that was furnished by the tenant. A trade was established in the neighborhood, and, while the lease had three years to run, the sublessee, conspiring with the landlord and another brewer, took possession of the place as the subtenant for the other brewing company. Injunction proceedings were begun by the first tenant, and it alleged in the bill that its business carried on in said premises would be seriously injured, if not altogether ruined, unless the defendant was restrained from carrying on business on the premises. *Held*, that, a destruction of plaintiff's business being threatened, full and adequate relief could not be granted at law and an injunction would lie.—*Chesapeake Brewing Co. v. Mt. Vernon Brewing Co.*, 107 Md. 528, 68 Atl. 1046.

(b) A court of equity has jurisdiction, at the instance of a purchaser at a mortgage foreclosure sale of land on which a canning factory is situated, to restrain a party to whom the mortgagor of the land has executed a subsequent chattel mortgage, from selling the machinery on the premises covered by the mortgage, during the canning season, when the sale would destroy the business conducted therein, as the owner would have no adequate remedy at law.—*Dudley v. Hurst*, 67 Md. 44, 8 Atl. 901, 1 Am. St. Rep. 368.

#### § 56. Disclosure or use of trade secrets.

##### Cross-References.

Right of assignee of trade secret to restrain use by unauthorized persons, see "Assignments," § 98.

##### Annotation.

Injunction to protect trade secrets.—13 L. R. A. (N. S.) 102; 20 L. R. A. (N. S.) 933, notes.

Injunction to restrain use of trade secrets.—13 L. R. A. 652, note.

#### (C) CONTRACTS.

##### Cross-References.

Delay of performance of contract by injunction as extending time of performance, see "Contracts," § 300.

Delay of performance of municipal contract caused by injunction as affecting rights of parties, see "Municipal Corporations," § 364.

Enforcement of contracts specifying charges for gas, see "Gas," § 14.

Party wall agreement, see "Party Walls," § 10.

Performance of contracts by foreign corporation, see "Corporations," § 657.

Usurious contract of corporation, see "Corporations," § 189.

### § 57. Contracts enforceable in general.

#### Annotation.

Power to grant mandatory injunctions as to specific performance of contracts.—20 L. R. A. 167, note.

(a) Act 1888, c. 260 (Code 1888, art. 16, § 69), providing that no court shall refuse to issue an injunction on the ground that the party asking for it has an adequate remedy in damages, does not authorize an injunction to be issued to pay a debt.—*Frederick County Nat. Bank v. Shafer*, 87 Md. 54, 39 Atl. 320. (See Code 1911, art. 16, § 84.)

(b) In proceedings to enjoin a breach of contract the court will not inquire into the adequacy of the consideration therefor, but it will be sufficient if the contract shows on its face a legal and valuable consideration.—*Guerand v. Dandeleit*, 32 Md. 561, 3 Am. Rep. 164. [Cited and annotated in 24 L. R. A. (N. S.) 932, on validity of agreement in restraint of trade, ancillary to sale of business or profession, as affected by territorial scope.]

(c) A. agreed with her son B. to devise certain land to him and his heirs, in consideration of a release by him of certain claims. The will was duly executed, but the devisee died before the testatrix, and she executed a new will, devising the land to C. Held, that a court of equity could not interfere to protect B.'s heirs against C.'s claim to the land.—*Simmons v. Hill*, 4 H. & McH. 252, 1 Am. Dec. 398.

### § 58. Negative or restrictive covenants or stipulations in general.

#### Annotation.

Right to enforcement of restrictive covenant as affected by change in neighborhood.—28 L. R. A. (N. S.) 706, note.

### § 59. Breaches of contract which may be restrained in general.

#### Cross-Reference.

See "Street Railroads," § 50.

(a) A telephone company, which, under an ordinance, accepted by it, and statutes ratifying such contract, has a right, which cannot be taken away by the city, to lay con-

duits, in accordance with the ordinance, having filed with the city commissioner, as required by the ordinance, plans setting forth the location and character of the conduits proposed to be constructed, and having alleged willingness to construct them under the supervision of such commissioner, in accordance with the ordinance, injunction will issue restraining the city from interference with the construction, subject to modification in case the company refuses to obey the reasonable directions and regulations of the commissioner, or does anything reasonably prohibited by him.—*Chesapeake & P. Tel. Co. v. City of Baltimore*, 90 Md. 638, 45 Atl. 446.

(b) Injunction is the proper remedy for threatened violation of a contract by a city.—*Chesapeake & P. Tel. Co. v. City of Baltimore*, 89 Md. 689, 43 Atl. 784, 44 Atl. 1033. [Cited and annotated in 50 L. R. A. 146, 149, on privilege of using streets as contract within provision against impairing obligation; in 6 L. R. A. (N. S.) 782, on remedy to make street franchise available as against municipality.]

(c) The defendant agreed with a theatrical company to give them his services as an actor for a specified time, and not to give his services elsewhere without their written permission. The agreement contained a stipulation to the effect that, if he should break his engagement, he obligated himself to pay to the company a conventional fine of \$200, to be forfeited by any violation of the contract, and then provided as follows: "This sum of \$200 is already forfeited by any violation of the contract, and requires no particular legal proceedings for its execution." On a bill for an injunction, filed by the company against the defendant to restrain him from performing at another theater, held, that the complainants, having fixed by their own estimate the extent of injury they would suffer from a nonobservance of this condition in the contract, and having indicated that the only form in which they could seek redress and recover the stipulated penalty or forfeiture was a court of law, were precluded from resorting to a court of equity for relief by way of injunction, on the ground that a violation of this part of the contract would result in irreparable dam-

age and injury to them.—*Hahn v. Concordia Soc.*, 42 Md. 460. [Cited and annotated in 2 L. R. A. (N. S.) 212, on specific performance of contract containing provision for liquidated damages; in 6 L. R. A. (N. S.) 1122, on enforcement of contract of service by equity.]

### § 60. Contracts for personal services.

#### Cross-Reference.

Restraining infant from violating agreement, see "Infants," § 70.

#### Annotation.

Enforcement of contracts of service by court of equity.—6 L. R. A. (N. S.) 1115, note.

Right to mandatory injunction to compel specific performance of contract for services.—20 L. R. A. 167, note.

(a) Though a contract for services as a piano salesman and collector provided that defendant should not work for any other firm, *held*, that, where it did not appear that he was peculiarly fitted for the services or that they were in any way extraordinary, no injunction would lie to prevent a breach of his agreement.—*Rosenstein v. Zentz*, 118 Md. 564, 85 Atl. 675, 44 L. R. A. (N. S.) 63. [Cited and annotated in 44 L. R. A. (N. S.) 1161, on protection of trade secrets.]

(b) Where a husband, for himself and wife, made a contract that his wife should perform at a theater during a certain period, equity will not enjoin another theatrical manager from giving her employment within the term.—*Burton v. Marshall*, 4 Gill 487, 45 Am. Dec. 171. [Cited and annotated in 20 L. R. A. 168, on power to grant mandatory injunctions; in 6 L. R. A. (N. S.) 1133, 1137, on enforcement of contract of service by equity.]

### § 61. Contracts in restraint of trade.

#### Cross-Reference.

Validity of contract, see "Contracts," §§ 116-118.

#### Annotation.

Remedy by injunction to restrain the violation of an agreement not to practise medicine or surgery within a certain territory.—L. R. A. 1915B, 206, note.

Right of husband to prevent wife engaging in a separate business in competition with his own.—32 L. R. A. (N. S.) 837, note.

Injunction to prevent employee from entering service of rival in violation of agreement.—31 L. R. A. (N. S.) 249, note.

Injunction against breach by employee of agreement not to engage in a competing business.—16 L. R. A. (N. S.) 389, note.

Effect of stipulation for liquidated damages in contract not to engage in business upon equitable jurisdiction to enjoin breach thereof.—10 L. R. A. (N. S.) 204, note.

Injunction to prevent breach of stipulation to handle or use the product of one producer only.—10 L. R. A. (N. S.) 475, note.

(a) The sale of the business of a surgeon chiropodist, "including the good will," entitles the purchaser to enjoin the seller from reengaging in the business in the same territory over which the seller's former practice had extended, without an express covenant to that effect.—*Brown v. Benzinger*, 118 Md. 29, 84 Atl. 79, Ann. Cas. 1914B, 582.

(b) in the case of the sale of the good will of a trade or business of a commercial character where the location is an important feature of the business equity will not imply an agreement on the part of the seller not to engage in the same business in the same locality in the absence of an express contract, while in the case of a sale of an established practice and good will of a person engaged in a professional calling where the income therefrom is the immediate or direct result of his labor and skill, and where integrity, skill, ability and other desirable personal qualities follow the person and not the place, equity will imply such an agreement, although there be no express contract to that effect.—*Brown v. Benzinger*, 118 Md. 29, 84 Atl. 79, Ann. Cas. 1914B, 582.

(c) Where the proprietor of an establishment leased the same for a term of years and sold the good will thereof, covenanting that he would not at any time thereafter exercise such trade or profession in the city of B., such covenant was valid, and the violation thereof would be restrained.—*Guerand v. Dandelet*, 32 Md. 561, 3. Am. Rep. 164. [Cited and annotated, see *supra*, § 57.]

### § 62. Covenants as to use of premises.

#### Cross-Reference.

Remedy at law or in equity for injunction or reconveyance, see "Covenants," § 104.

(a) Where a lease of property contained a condition that neither the lessee nor his assigns should erect any building or tenement any portion of which should be higher than the then level of the third story of a hotel

on an adjoining lot, an injunction would be granted to prevent the violation of such condition by an erection obstructing the light and ventilation of the third story of such hotel, since no adequate compensation at law can be had therefor.—*Thruston v. Minks*, 32 Md. 487. [Cited and annotated in 22 L. R. A. 542, on easements of light, air and prospect.]

(b) The lessor may restrain by injunction his lessee or sublessee from converting the demised premises to uses inconsistent with the terms of the lease, and from making material alterations in the building for that purpose, or committing other waste.—*Madrox v. White*, 4 Md. 72, 59 Am. Dec. 67.

### § 63. Inducing breach of contract.

#### Cross-Reference.

Combinations interfering with employees, see post, § 101.

#### Annotation.

Injunction against inducing breach of contract or assisting in a continuance of such breach.—11 L. R. A. (N. S.) 202, note.

### (D) CORPORATE FRANCHISES, MANAGEMENT, AND DEALINGS.

#### Cross-References.

Construction of street railroad, see "Street Railroads," § 57.

Crossing of one railroad by another, see "Railroads," §§ 89, 91.

Enforcement or violation of regulations relating to carriers, see "Carriers," § 18.

Excessive charges by telegraph or telephone companies, see "Telegraphs and Telephones," § 33.

Excessive street-car fares, see "Street Railroads," § 57.

Execution of contract by corporation, see "Corporations," § 189.

Illegal voting of corporate shares, see "Corporations," § 197.

Improper issuance of corporate stock, see "Corporations," § 189.

Interference with railroad right of way, see "Railroads," § 67.

Interference with right of railroad company to occupy streets, see "Railroads," § 79.

Interference with right of receiver in respect to lease, see "Railroads," § 208.

Interference with use of railroad right of way, see "Railroads," § 69.

Laying of gas pipes under railroad right of way, see "Gas," § 9.

Performance of contracts by foreign corporation, see "Corporations," § 657.

Use by one railroad company of tracks of another company, see "Railroads," § 80.

Use of corporate name, see "Corporations," § 49.

### § 64. Franchises and rights protected in general.

(a) Where stockholders are about to violate the charter of the corporation by making a colorable transfer of stock and taking a power of attorney from the transferee authorizing them to vote the stock in violation of the charter, fixing a maximum to which any single proprietor could be entitled, injunction is the proper remedy.—*Campbell v. Poultney*, 6 G. & J. 94, 26 Am. Dec. 559. [Cited and annotated in 29 L. R. A. 848, on right to vote by proxy in private corporation.]

### § 65. Infringement of corporate franchise or rights.

(a) Where a city refuses to grant a corporation a permit to lay its water mains on a street under its alleged charter rights, the corporation, instead of bringing mandamus to compel the issuance of a permit, may bring injunction to restrain interference with the laying of the mains.—*City of Baltimore v. Baltimore County Water & Electric Co.*, 95 Md. 282, 52 Atl. 670. [Cited and annotated in 61 L. R. A. 41, 86, on establishment and regulation of municipal water supply; in 6 L. R. A. (N. S.) 782, on remedy to make street franchise available as against municipality.]

(b) A corporation will be restrained by a court of equity from a gross abuse of their powers when to the injury of individuals,—as where a corporation undertakes to condemn property for the use of the corporation under a repealed law, by which a party is injured in his business.—*City of Frederick v. Groshon*, 30 Md. 436, 96 Am. Dec. 591. [Cited and annotated in 48 L. R. A. 465, 490, on legislative power to impose burdens on municipalities and to control their local administration and property.]

### §§ 66-68. Exercise or misuse of corporate franchise or powers.

### §§ 69-71. Management of corporate affairs or business.

(a) A court of equity has jurisdiction to enjoin the supreme lodge and officers of a benefit association from excluding properly qualified state representatives from voting at sessions of the supreme lodge.—*Supreme Lodge, Order of the Golden Chain v. Simering*, 88 Md. 276, 40 Atl. 723, 71 Am. St. Rep. 409, 41 L. R. A. 720.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

(b) Injunction will not lie, at the instance of members of a benefit association, to prohibit its officers from exercising the powers vested in them on the ground of irregularity in their election.—*Supreme Lodge, Order of the Golden Chain v. Simering*, 88 Md. 276, 40 Atl. 723, 71 Am. St. Rep. 409, 41 L. R. A. 720.

(c) When stock in a corporation is transferred, without consideration, for the purpose of fraudulently controlling an election, injunction is the proper remedy to prevent the transferees from voting.—*Webb v. Ridgely*, 38 Md. 364. [Cited and annotated in 29 L. R. A. 845, on right to vote by proxy in private corporations.]

(d) Complainants' bill alleged that the charter of the corporation in which they were stockholders prescribed that 60 votes should be the maximum allowed to one stockholder and such shares must be held for four months prior to the day of election, and that the defendant stockholders had fraudulently caused shares to be transferred to divers unknown persons without consideration, and had taken from them powers of attorney securing the right of voting such shares. *Held*, that injunction was the proper remedy.—*Campbell v. Poultney*, 6 G. & J. 94, 26 Am. Dec. 559. [Cited and annotated in 29 L. R. A. 848, on right to vote by proxy in private corporations.]

## § 72. Disposition of or dealings with corporate property.

### Annotation.

Injunction against sale of corporate franchise or property necessary to its enjoyment.—20 L. R. A. 737, note.

(a) A railroad company executed a mortgage of its entire road, with all the tolls and revenues thereof, to the state of Maryland to secure the payment of an annuity; the state standing as second and third incumbrancer. *Held*, that it appearing that the company, in violation of its duty, was applying its revenues, the only means of paying the annuity, to the payment of junior incumbrances, injunction would lie at the suit of the state.—*State v. Northern Cent. Ry. Co.*, 18 Md. 193. [Cited and annotated in 15 L. R. A. 84, on consolidated interstate corporation as domestic corporation of one of states; in 33 L. R. A. (N. S.) 377, on set-off, counterclaim, or recoupment in action by state.]

## § 73. Infringement or denial of rights of stockholders.

### Annotation.

Injunction to enforce stockholder's right to inspect corporate books.—45 L. R. A. 458, note.

## (E) PUBLIC OFFICERS AND BOARDS AND MUNICIPALITIES.

### Cross-References.

Injunction in aid of other proceeding against officer, see ante, § 8.

Mandatory injunction against officers, see ante, § 5.

Restraining conspiracy by justice to issue warrants, see post, § 105.

Assessments to aid construction of gravel roads or turnpikes, see "Turnpikes and Toll Roads," § 10.

Claims to patents, jurisdiction of commissioner of patents and interference by courts, see "Patents," § 114.

Collection of fees and taxes for licenses, see "Intoxicating Liquors," § 94.

Compelling postmaster general to admit publication to mails as second-class matter, see "Post Office," § 15.

Condemnation of turnpike for failure to keep in repair, see "Turnpikes and Toll Roads," § 20.

Construction of bridge, see "Bridges," § 23.

Construction or maintenance of wharf or pier, see "Navigable Waters," § 43; "Wharves," § 8.

Conveyance of lands purchased by state at tax sale, see "Taxation," § 679.

Conveyance to purchaser at execution sale, see "Execution," § 308.

Declaration and publication of result of local option election, see "Intoxicating Liquors," § 36.

Enforcement of assessment for public improvements, see "Drains," § 91; "Highways," § 148; "Levees," § 29; "Municipal Corporations," §§ 534-538; "Waters and Water Courses," § 231.

Enforcement of license tax against express companies, see "Carriers," § 8.

Enforcement of taxes, see "Highways," § 129; "Municipal Corporations," § 979; "Schools and School Districts," § 107; "Taxation," §§ 606-611.

Equity jurisdiction in general, see "Equity," § 29.

Execution or delivery of tax deed, see "Taxation," § 752.

Extension of city limits, see "Municipal Corporations," § 33.

Formation of reclamation districts, see "Drains," § 14.

Grant of liquor license, see "Intoxicating Liquors," § 73.

Incurance of indebtedness by municipality, see "Municipal Corporations," § 994; "Schools and School Districts," § 111; "States," § 168½.

Issuance of license, see "Intoxicating Liquors," § 73.

Levy of tax, see "Taxation," § 301.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Maintenance of waterworks by municipality, see "Waters and Water Courses," § 195.

Obstruction of or interference with performance of official duty, see "Officers," § 113.

Occupancy of public office, see "Officers," § 82.

Opening highway, see "Highways," § 64.

Payment of claims by receiver, see "Receivers," § 163.

Proceedings under illegal contract affecting county, see "Counties," § 130.

Refusal of election officers to correct returns, see "Elections," § 254.

Removal of site of county buildings, see "Counties," § 37.

Restraining postmaster from withholding mail, see "Post Office," § 26.

Sale of land for taxes, see "Taxation," § 652.

Separation of village from school district, see "Schools and School Districts," § 34.

Wrongful assessment or collection of license fees or taxes, see "Licenses," § 35.

#### § 74. Officers and official acts which may be restrained in general.

(a) A court of equity will interfere by injunction to arrest the illegal proceedings of public functionaries.—*City of Baltimore v. Porter*, 18 Md. 284, 79 Am. Dec. 686. [Cited and annotated in 22 L. R. A. 707, on injunction against collection of illegal taxes.]

#### § 75. State or national boards and officers.

##### Cross-References.

Restraining board of control from locating public dispensary, see "Intoxicating Liquors," § 128.

Restraining general assembly from passing proposed statute, see "Constitutional Law," § 70.

Right of lowest bidder for state work to restrain board from letting contract to competitor, see "States," § 98.

Unauthorized or illegal acts, see "States," § 168½.

(a) Act 1902, p. 276, c. 179, creating a board of pharmacy, provides in § 8 "that any person who at the passage of this act is actively engaged as owner or manager, or is and has been so engaged as clerk for five years or more, and has reached the age of twenty-one years, in compounding drugs and dispensing physicians' prescriptions in one of the counties of this state, and who shall on or before" a day named forward to the board an affidavit to that effect, together with a fee of \$1, shall be entitled to registration as pharmacist, and to a certificate of such registration. Other sections pro-

vide for the appointment of "skilled and competent pharmacists who are themselves" actively engaged in the retail drug business to the board of pharmacy. No appeal is provided for. *Held*, that the duties imposed on the board by § 8 are not strictly ministerial, but involve the exercise of judgment and discretion, and, there being no intimation of fraud, a mandatory injunction cannot issue to compel the board to reject an application.—*Henkel v. Millard*, 97 Md. 24, 54 Atl. 657. (See Code, art. 43, § 184.)

#### § 76. County or town boards and officers.

##### Cross-References.

Assessment for taxation, see "Taxation," § 498.

Unauthorized or illegal acts, see "Counties," § 196; "Towns," § 68.

(a) It is not within the sound discretion of a court of equity to interfere to stop the proceedings of a class of officers in the county, charged with the registration of its voters, because a few of the officers in certain districts were not proper subjects of appointment.—*Hardesty v. Taft*, 23 Md. 512, 87 Am. Dec. 584. [Cited and annotated in 25 L. R. A. 483, as to how far right to vote is absolute; in 3 L. R. A. (N. S.) 383, on equity interference in matters preceding elections.]

(b) A court of equity cannot be invoked to prevent the performance of political duties, like those committed to the officers of registration under the law. For irregularities in the conduct of an election, for receiving illegal or rejecting legal votes, and for the correction of consequences resulting therefrom, the law provides appropriate remedies and modes of procedure. Such matters are not the subject of equitable jurisdiction.—*Hardesty v. Taft*, 23 Md. 512, 87 Am. Dec. 584. [Cited and annotated, see *supra*.]

#### § 77. Municipalities and municipal officers in general.

##### Cross-References.

Assessments for public improvements, see "Municipal Corporations," § 513.

Unauthorized or illegal acts, see "Municipal Corporations," § 993.

#### § 78. School boards and officers.

##### Cross-References.

Breach of contract with school district for supplying text-books, see "Schools and School Districts," § 86.



Change of schoolhouse site, see "Schools and School Districts," § 69.

Employment of teacher not having certificate, see "Schools and School Districts," § 48.

Unauthorized or illegal acts, see "Schools and School Districts," § 111.

(a) An injunction will not be granted to control the discretion of a board of school commissioners in the letting of a contract for supplying one of the public schools with heating apparatus.—*City of Baltimore v. Weatherby*, 52 Md. 442. [Cited and annotated in 36 L. R. A. (N. S.) 25, on taxpayer's right to enjoin unlawful municipal expenditures; in 38 L. R. A. (N. S.) 659, on discretion in choosing between bidders for public contract.]

(b) An injunction will not be granted to interfere with the discretion of the board of county school commissioners as to the exercise of their functions.—*Wiley v. Allegany County School Com'rs*, 51 Md. 401. [Cited and annotated in 36 L. R. A. (N. S.) 25, on taxpayer's right to enjoin unlawful municipal expenditures.]

#### § 79. Highway boards and officers.

##### Cross-References.

Drainage of highways, see "Highways," § 120.

Vacation of highway, see "Highways," § 77.

(a) Act 1803, c. 89, empowering highway commissioners to lay out a road, leading from the city of Annapolis, in the best and straightest direction, leaves the manner of executing it to their discretion, which the court should not restrain.—*Worthington v. Bicknell*, 1 Bland 186, note (e).

(b) Before the action of the highway commissioners about to open a highway should be impeded by injunction, it should appear clearly and satisfactorily that they were about to act contrary to law or in some way to injure the complainant so as to come within the established principles.—*Worthington v. Bicknell*, 1 Bland 186, note (e).

#### § 80. Elections and election officers.

##### Annotation.

Injunction against holding election.—40 L. R. A. (N. S.) 577, note.

(a) Equity has no jurisdiction to issue an injunction to restrain a city clerk from putting on the official ballot names of persons mentioned in certificates of nomination.—*City of Annapolis v. Gadd*, 97 Md. 734, 57

Atl. 941. [Cited and annotated in 3 L. R. A. (N. S.) 383, on equity interference in matters preceding elections.]

(b) Injunction will not lie to restrain the proceedings of registrars of election in a county on the ground that certain of them were at the same time holding other state offices of trust and profit, in contravention of Const. 1864, Decl. Rights, art. 35.—*Hardesty v. Taft*, 23 Md. 512, 87 Am. Dec. 584. (See Const. 1867, Decl. Rights, art. 35.) [Cited and annotated in 25 L. R. A. 483, as to how far right to vote is absolute; in 3 L. R. A. (N. S.) 383, on equity interference in matters preceding elections.]

(c) Injunction will not lie to prevent the performance of political duties, like those committed to registrars of election, as there is an adequate remedy by an action for damages.—*Hardesty v. Taft*, 23 Md. 512, 87 Am. Dec. 584. [Cited and annotated, see supra.]

(d) Where the registrars of an election have misconceived their duty in any respect, or violated their trust by propounding to applicants for registration unwarranted questions, equity will not interfere by injunction and arrest their proceedings because one or more persons may not have been fairly dealt with.—*Hardesty v. Taft*, 23 Md. 512, 87 Am. Dec. 584. [Cited and annotated, see supra.]

(e) Whatever may be the effect in a county or election district of a registration of voters by officers not qualified as the law directs, equity will not order by injunction an election therein in a manner different from that designated by law.—*Hardesty v. Taft*, 23 Md. 512, 87 Am. Dec. 584. [Cited and annotated, see supra.]

#### § 81. Appointment or removal of officers.

(a) Injunction held not to lie to restrain the clerk of a circuit court from swearing in one appointed by the Governor to fill an alleged vacancy in an office, nor to restrain the appointee from taking the oath of office and from signing the official test book, where there had been no actual interference with plaintiff's possession.—*Price v. Collins*, 122 Md. 109, 89 Atl. 383.

(b) Since the acts relating to insolvent debtors in the city and county of Baltimore

invest the commissioners with exclusive jurisdiction concerning the appointment of permanent trustees, injunction will not lie in equity to interfere with the exercise of their right.—*Glenn v. Fowler*, 8 G. & J. 340.

§ 82. Exercise of office in general.

§ 83. Meetings and proceedings of boards or other bodies.

*Cross-Reference.*

Grant of franchise to street railroad company, see "Street Railroads," § 26.

§ 84. Passage of ordinances or resolutions.

*Cross-Reference.*

Repeal of ordinance granting consent to construction of railroad in street, see "Railroads," § 79.

*Annotation.*

Power to enjoin passage of municipal ordinance.—13 L. R. A. 844; 2 L. R. A. (N. S.) 152, notes.

§ 85. Enforcement of statutes, ordinances, or other regulations.

*Cross-References.*

By mandatory injunction, see ante, § 5.

As to erection of buildings, see "Municipal Corporations," § 627.

Jurisdiction of federal court to enjoin enforcement of law violating federal Constitution, see "Courts," §§ 260, 282.

Jurisdiction of federal courts to enjoin enforcement of ordinance, see "Courts," § 260.

Regulation of charges for gas, see "Gas," § 14.

(a) Injunction will lie to restrain action under a void city ordinance.—*City of Baltimore v. Radecke*, 49 Md. 217, 33 Am. Rep. 239. [Cited and annotated in 19 L. R. A. 858, on validity of ordinances as to street parades; in 21 L. R. A. 88, on injunction against criminal proceedings; in 36 L. R. A. 601, 608, on municipality's power to define, prevent, and abate nuisance; in 38 L. R. A. 307, on municipal power over nuisances affecting safety, health and personal comfort; in 39 L. R. A. 621, on municipal control over railroads and electrical companies as nuisances on streets; in 1 L. R. A. (N. S.) 941, on validity of ordinance vesting discretion as to subject-matter in officers; in 2 L. R. A. (N. S.) 632, on injunction against criminal or quasi criminal prosecution; in 9 L. R. A. (N. S.) 660, on municipal power to make right to transact certain business dependent on consent.] *City of Baltimore v. Scharf*, 54 Md. 499. [Cited and annotated in 17 L. R. A. 331, on constitutionality of frontage rule of assessment; in 20 L. R. A. 656, on delegation by city council of power to determine width, grade, material, etc., of street, sidewalk, or sewer improvements; in

46 L. R. A. 198, on street railway's liability for paving assessment; in 28 L. R. A. (N. S.) 1203, 1204, on assessments for improvements by front-foot rule; in 43 L. R. A. (N. S.) 466, as to when duty assumed by street railway to repave or repair arises.] *Deems v. City of Baltimore*, 80 Md. 164, 30 Atl. 648, 26 L. R. A. 541. [Cited and annotated in 38 L. R. A. 657, on municipal power over nuisances relating to trade or business; in 48 L. R. A. 261, on legal restrictions on department stores; in 1 L. R. A. (N. S.) 918, on police regulations describing standard of quality of milk; in 1 L. R. A. (N. S.) 926, on right to prescribe particular test or analysis of milk; in 29 L. R. A. (N. S.) 260, on validity of statute or ordinance for destruction of food products below prescribed standard.]

§ 86. Unauthorized or fraudulent improvements or contracts.

*Cross-References.*

Averments of fraud, see post, § 118.

Time to sue, see post, § 112.

Award of contract for public improvements, see "Municipal Corporations," § 336.

Construction of drain, see "Drains," § 40. Making municipal improvements without payment of damages, see "Municipal Corporations," § 404.

Making public improvements, see "Municipal Corporations," § 323.

Proceedings under illegal contract affecting county, see "Counties," § 130.

Rights and remedies of taxpayers, see "Counties," § 196; "Municipal Corporations," § 993; "Schools and School Districts," § 111; "Towns," § 61.

(a) An injunction will not be granted against municipal officers to restrain the execution of a contract to supply the city departments with stationery, upon the application of an unsuccessful bidder for the contract, although the successful bidder is charged with having fraudulently obtained the contract.—*Kelly v. City of Baltimore*, 53 Md. 134. [Cited and annotated in 36 L. R. A. (N. S.) 11, 14, 27, 28, on taxpayer's right to enjoin unlawful municipal expenditures; in 38 L. R. A. (N. S.) 657, on discretion in choosing bidders for public contract.]

§ 87. Issue of bonds or other securities.

*Cross-References.*

See "Counties," § 196; "Municipal Corporations," § 993; "Schools and School Districts," § 111; "Towns," § 61.

§ 88. Payment or other disposition of public money.

*Cross-References.*

Payment of levee district warrants, see "Levees," § 38.

Rights and remedies of taxpayers, see "Municipal Corporations," § 995; "Schools and School Districts," § 111; "States," § 168½; "Towns," § 61.

(a) An injunction will be granted to prevent a board of county school commissioners from applying funds to objects not embraced in the power granted to such board, or applying it to objects within the power, but in total disregard of the essential conditions prescribed in the statute.—*Wiley v. Alleghany County School Com'rs*, 51 Md. 401. [Cited and annotated in 36 L. R. A. (N. S.) 25, on taxpayer's right to enjoin unlawful municipal expenditures.]

(F) PUBLIC WELFARE, PROPERTY, AND RIGHTS.

*Cross-References.*

Obstruction of navigation, see "Navigable Waters," § 26.

Waste or other disposition of or injury to municipal property, see "Municipal Corporations," § 996.

§ 89. Protection of public in general.

(a) Where plaintiff and defendant both claim the right to demand wharfage for the use of a public wharf of which no toll can be legally demanded, they will both be perpetually enjoined, for the benefit of the public, from collecting wharfage.—*In re Wharf*, 3 Bland 361.

§§ 90-92. (See Analysis.)

§ 93. Use of streets and other public places in cities.

*Cross-References.*

Crossing highway by railroad, see "Railroads," §§ 94, 99.

Electric wires, see "Electricity," § 20.

Obstruction of highway, see "Highways," §§ 87, 159.

Obstruction of street, see "Municipal Corporations," § 697.

Operation of railroad in street, see "Railroads," § 79.

Telegraph or telephone system, see "Telegraphs and Telephones," § 10.

Tollgate, see "Turnpikes and Toll Roads," § 42.

(G) PERSONAL RIGHTS AND DUTIES.

*Cross-References.*

Restraining trade union from reporting expulsion of employee, see "Trade Unions," § 4.

Use of name, see "Names," § 17.

§ 94. Rights protected in general.

*Annotation.*

Injunction to protect personal right.—37 L. R. A. 783; 1 L. R. A. (N. S.) 1147, notes.

(a) A court may pass an order allowing the publication of facts in regard to any suit pending before them, where there is no discussion, anticipation, or hindrance of the results of justice, or of the questions pending at the hearing; and no injunction will lie to prevent a statement of fact that a suit has been brought to restrain defendants from selling certain goods on the ground of infringement of plaintiff's trade-mark, where its merits are not gone into.—*Meyer v. Devries*, 64 Md. 532, 2 Atl. 915.

(b) There is no case in which equity has granted a perpetual injunction to a plaintiff to protect him in the enjoyment of a naked legal right which he and those under whom he claims have stipulated by solemn deeds not to exercise. Legal rights must be asserted by legal means, and courts of equity never lend their aid where equity and justice do not imperiously demand it.—*Bosley v. McKim*, 7 H. & J. 468.

§ 95. Protection from physical injury.

§ 96. Personal privacy.

§ 97. Private writings.

*Annotation.*

Rights and remedies of author who has parted with property rights in work.—3 L. R. A. (N. S.) 629, note.

§ 98. Libel and slander.

§ 99. Interference with occupation in general.

*Cross-References.*

Inducing breach of contract, see ante, § 63.

Compelling return of apprentice, see "Apprentices," § 21.

Interference with apprentice, see "Apprentices," § 21.

(a) A bill for an injunction alleging that the buildings on the grounds in question were used for giving medical instruction and as an infirmary for the sick by the professors composing the medical faculty of the corporation, and prayed that defendant be restrained from so acting as to interfere with their possession and use for that purpose, and that he be commanded to forbear from the repetition of acts which impeded the enjoyment of the rights and the discharge of the duties on the part of the professors. *Held*, that an injunction of this description could not be regarded as going

beyond the legitimate office of the process or as possessing the character of a judicial writ.—*Washington University v. Green*, 1 Md. Ch. 97. [Cited and annotated in 20 L. R. A. 169, on power to grant mandatory injunctions.]

### § 100. Publication of black list.

#### Annotation.

Injunction against blacklisting of servant.—20 L. R. A. 342; 4 L. R. A. (N. S.) 1121, notes.

### § 101. Boycotts and other combinations.

#### Cross-References.

Threatened injury, see ante, § 11.  
Monopolies, see "Monopolies," § 24.

(a) An injunction will lie to restrain the carrying on of a conspiracy to boycott plaintiff's business.—*My Maryland Lodge, No. 186, I. A. M. v. Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752. [Cited and annotated in 16 L. R. A. (N. S.) 85, 96, on legality of "secondary boycott" by labor union.]

(H) CRIMINAL ACTS, CONSPIRACIES, AND PROSECUTIONS.

### § 102. Criminal acts in general.

#### Cross-References.

Breaches of covenant, see ante, § 59.  
Continuing trespass involving crime, see ante, § 48.  
Former jeopardy, see "Criminal Law," § 162.  
Restraining games prohibited by law as constituting due course of law, see "Constitutional Law," § 312.  
Violations of liquor laws, see "Intoxicating Liquors," §§ 21, 258-281.

#### Annotation.

Injunction at the suit of state against public nuisance which is also a crime.—15 L. R. A. (N. S.) 747; 23 L. R. A. (N. S.) 691; 33 L. R. A. (N. S.) 325, notes.

### § 103. Criminal acts affecting rights of property.

#### Annotation.

Injunction against commission of crime when property right involved.—3 L. R. A. (N. S.) 622; 21 L. R. A. (N. S.) 585, notes.

### § 104. Criminal conspiracies and combinations.

#### Cross-Reference.

Right of state to enjoin conspiracy, see "States," § 192.

### § 105. Criminal prosecutions.

#### Cross-References.

Restraining enforcement of laws, see ante, § 85.  
Restraining police officers, see ante, § 77.

#### Annotation.

Injunction against criminal proceedings.—21 L. R. A. 84; 2 L. R. A. (N. S.) 631; 25 L. R. A. (N. S.) 193; 34 L. R. A. (N. S.) 454, notes.

(a) Where complainant had procured a license to operate a horse race meet, and had expended large sums in preparing and carrying on the same on the faith of the validity of act 1912, c. 132, repealing Code 1904, §§ 204-206, as amended by act 1906, c. 127, so far as applicable to Harford county, equity had jurisdiction pending determination of the constitutionality of the statute, to enjoin criminal prosecutions against persons carrying forward such enterprise, in order to protect complainant's property rights.—*Clark v. Harford Agricultural & Breeders' Ass'n*, 118 Md. 608, 85 Atl. 503. (See Code 1911 [vol. 3], art. 27, §§ 219-221, and note.)

## III. ACTIONS FOR INJUNCTIONS.

#### Cross-References.

Abatement by another action pending, see "Abatement and Revival," § 16.  
Joinder of causes of action, see "Action," § 46.  
Notice of pendency of action, see "Lis Pendens," § 15.  
Right of agent to enjoin proceedings against him as tenant, see "Principal and Agent," § 183.  
To restrain execution, see "Execution," § 172.  
To restrain wrongful enforcement of license taxes, see "Licenses," § 35.

### § 106. Nature and form.

### § 107. Rights of action.

#### Cross-References.

See post, § 114.  
Title to or possession of property to support action, see ante, § 35.

(a) Injunction lies against a railroad company, at the suit of a coal company whose tramroad connects with such railroad as its only outlet to market, to prevent the railroad company from making charges in excess of those fixed by statute.—*American Coal Co. v. Consolidation Coal Co.*, 46 Md. 15. [Cited and annotated in 33 L. R. A. 184, on legislative power to fix tolls, rates, or prices.]

### § 108. Conditions precedent.

#### Cross-References.

Confession of judgment as prerequisite to injunction against action at law, see ante, § 26.

Establishment of title or right by action at law, see ante, § 37.

(a) Equity will not interfere by injunction to restrain the sale of mortgaged premises by the mortgagee under a power in the mortgage for usury in the mortgage debt, unless the mortgagor pays, or brings into court to be paid, the principal sum actually due, with legal interest thereon.—*Powell v. Hopkins*, 38 Md. 1; *Walker v. Cockey*, Id. 75; *Warfield v. Ross*, Id. 85; *Hill v. Reifsnider*, 39 Md. 429. [Cited and annotated in 31 L. R. A. 761, 762, on injunction against judgments for defenses existing prior to rendition.]

(b) Where an injunction to restrain proceedings at law on money due on promissory notes given for the purchase price of land is claimed on the ground that the vendee has paid taxes which the vendor was bound to pay, the bill should state how much would remain due after deducting the taxes, and the balance should be brought into court to be paid to the vendor.—*Reynolds v. Howard*, 3 Md. Ch. 331.

(c) One surety cannot by injunction arrest the proceedings at law of his cosurety against him for contribution, unless he tenders the principal and interest due such cosurety, who has paid the principal debtor, or alleges that he is ready and willing to bring the same into court to be paid to him.—*Craig v. Ankeney*, 4 Gill 225.

### § 109. Defenses.

#### Cross-References.

Objections to relief by injunction, see ante, §§ 21-24.

Title or right in doubt or dispute, see ante, § 36.

Counterclaim, see "Set-Off and Counterclaim," §§ 14, 23, 34.

### § 110. Jurisdiction.

#### Cross-References.

Adequacy of legal remedy as affecting equity jurisdiction of federal courts, see "Courts," § 262.

Appellate jurisdiction as dependent on whether case involves freehold, see "Courts," § 213.

Appellate jurisdiction dependent on amount or value in controversy, see "Courts," §§ 224, 231.

Appellate jurisdiction in general, see "Courts," §§ 222, 231, 240.

As dependent on domicile or residence of parties, see "Corporations," § 665.

As dependent on situs of property, see "Courts," § 18.

Concurrent and conflicting jurisdiction, see "Courts," § 475.

Concurrent and conflicting jurisdiction of state and federal courts, see "Courts," § 493.

Concurrent and exclusive jurisdiction of state courts, see "Courts," § 472.

Concurrent and exclusive jurisdiction of state and federal courts, see "Courts," §§ 489, 491.

Courts invested with appellate jurisdiction, see "Courts," § 220.

Courts invested with original jurisdiction, see "Courts," §§ 142, 155.

District in which suit may be brought in federal court, see "Courts," §§ 273, 274.

Equity jurisdiction of appellate courts, see "Courts," § 206.

Of courts of general jurisdiction, see "Courts," § 125.

Of courts of general jurisdiction as dependent on amount in controversy, see "Courts," §§ 120-122.

Of courts of inferior or limited jurisdiction in general, see "Courts," § 183.

Of courts as affected by fact that suit is collusive, see "Courts," § 316.

Of federal courts as dependent on amount or value in controversy, see "Courts," § 328.

Of federal court as dependent on constitutional question, see "Courts," § 282.

Of federal courts as dependent on diverse citizenship, see "Courts," §§ 308, 310.

Of federal courts of suit against partnership as affected by the citizenship of the individual members of the partnership, see "Courts," § 315.

Of federal court to enjoin enforcement of law violating federal Constitution, see "Courts," §§ 260, 282.

Of marine courts, see "Courts," § 175.

Of municipal courts in general, see "Courts," § 188.

Of one court to enjoin proceedings in another court, see "Courts," § 480.

Of suit to enjoin municipality as dependent on federal question being involved, see "Courts," § 282.

Original jurisdiction of appellate courts, see "Courts," §§ 207, 212.

Protection of rights of property on Indian lands, see "Indians," § 27.

Removal of cause from state to federal court, see "Removal of Causes," §§ 4, 5, 11, 18, 21, 74, 86.

To restrain use or disposition of property in custody of other courts, see "Courts," § 478.

Waiver of objections to jurisdiction, see "Courts," § 37.

(a) Under Code 1888, art. 16, § 71, providing that a circuit judge may grant injunctions to take effect in any part of his circuit, a Circuit Court whose jurisdiction is confined to one county has no power to enjoin state officers not within its jurisdiction from reviewing the determination of another

state officer, made beyond the court's jurisdiction, respecting the division of an assessment of a railroad's rolling stock not situated within its jurisdiction.—*Graham v. Commissioners of Harford County*, 87 Md. 321, 39 Atl. 804. (See Code 1911, art. 16, § 86.)

(b) Corporations, owing their corporate existence in part to the state of Maryland and exercising their franchises therein, may be restrained there from expending their funds for any other than corporate purposes elsewhere, and a plea to the jurisdiction of the Maryland court is untenable.—*State v. Northern Cent. Ry. Co.*, 18 Md. 198. [Cited and annotated in 15 L. R. A. 84, on consolidated interstate corporation as domestic corporation of one of states; in 33 L. R. A. (N. S.) 377, on set-off, counterclaim, or recoupment in action by state.]

(c) Where defendant is in Maryland, but the land in controversy is in Virginia, and the object of the suit in the former state is to vacate a decree of the court of the latter state, though this cannot be done, yet defendant, seeking to enforce such decree, may be enjoined from accepting a conveyance of land purchased by him under it.—*Buchanan v. Lorman*, 3 Gill 51. [Cited and annotated in 31 L. R. A. 752, on injunction against judgments for defenses existing prior to rendition; in 32 L. R. A. 322, on equitable jurisdiction as to injunctions against judgments; in 7 L. R. A. (N. S.) 450, on injunction against collection of purchase money where title defective.]

#### § 111. Venue.

##### Cross-Reference.

Action against county, see "Counties," § 215.

#### § 112. Time to sue in general.

#### § 113. Limitations and laches.

##### Cross-References.

See "Elections," § 154.

Actions between corporation and members thereof, see "Corporations," § 189.

Computation of period of limitation, see "Limitation of Actions," § 60.

(a) Where a party is guilty of the want of reasonable promptitude in suffering such time to elapse without steps to vindicate his rights as will render an injunction injurious to defendant, equity may refuse to interfere by injunction.—*City of Baltimore v. Grand Lodge, I. O. O. F.*, 44 Md. 436. [Cited and

annotated in 22 L. R. A. 706, on injunction against collection of illegal taxes.]

(b) When a railroad is authorized by law to lay a track within the limits of a city with the assent of the city government, and the assent is obtained upon condition that certain regulations are obeyed by the railroad, the city does not lose its right to apply for an injunction to restrain the railroad from completing the track, on account of a breach of such regulations, because there is some delay in making the application.—*Northern Cent. Ry. Co. v. City of Baltimore*, 21 Md. 98. [Cited and annotated in 20 L. R. A. 726, on delegation of municipal power as to license, franchise, and buildings; in 36 L. R. A. 33, on municipal power to impose conditions in consenting to railway in street; in 44 L. R. A. 570, on injunctions by municipalities against nuisances by railroads and electrical companies; in 53 L. R. A. 891, on prescriptive right to maintain public nuisance.]

(c) To entitle plaintiff to an injunction, he must not be guilty of any improper delay in applying for relief.—*In re Binney*, 2 Bland 99. [Cited and annotated in 42 L. R. A. 327, on what waters are navigable; in 61 L. R. A. 847, 849, 854, on construction and operation of canals; in 65 L. R. A. 954, on jurisdiction over boundary rivers; in 69 L. R. A. 675, 689, 692, on equity jurisdiction over suits affecting realty outside state.]

#### § 114. Parties.

##### Cross-References.

Defects as ground for dissolution, see post, § 168.

On application for temporary injunction, see post, § 142.

Determination of rights under Mexican grant, see "Public Lands," § 213.

Multifariousness, see "Equity," §§ 149, 150.

United States or Federal officers, see "United States," § 185.

(a) An injunction to prevent the settlement of a suit, petitioned for by one alleging that he and his wife had a third interest in any money or property that might be recovered therein, could not be properly granted; the wife not being made a party.—*Hendrix v. Bull*, 111 Md. 389, 74 Atl. 572.

(b) On appeal from an order granting a temporary injunction, a suit for a temporary and permanent injunction to restrain the state tax commissioner from assessing the shares of stock and assets of certain corporations, according to a certain method, will

not be held defective at that stage because the corporations were not made parties, but the particular corporations should be made parties before any steps are taken in future proceedings, since the suit was not to control the action of the defendant in his entire assessment of corporation stock or assets.—*Schley v. Lee*, 106 Md. 390, 67 Atl. 252.

(c) A bill for an injunction to restrain the mayor and city council of the city of Baltimore from changing the use of a building from that of an English-German school to that of a colored high school was filed by complainants, suing as taxpayers, and alleged that all the property in the city would be injured by the proposed change, but not that complainants' property was situated in the immediate vicinity of the school, or would be otherwise specially injured by the change. *Held*, that as it did not appear that complainants had a special interest in the subject-matter, distinct from that of the general public, they had no standing to maintain a suit.—*Davidson v. City of Baltimore*, 96 Md. 509, 53 Atl. 1121. [Cited and annotated in 31 L. R. A. (N. S.) 581, on right of municipality to permit use of, or to lease public buildings for private purposes; in 31 L. R. A. (N. S.) 588, 592, on use of school property for other than school purposes.]

(d) Where a company manufacturing governors to regulate the pressure of gas connects its instruments with the meter of a consumer, with his consent, the consumer is not a necessary party to a suit by the gas company to restrain such action.—*Blondell v. Consolidated Gas Co.*, 89 Md. 732, 43 Atl. 817, 46 L. R. A. 187; *Consolidated Gas Co. v. Blondell*, *Id.* [Cited and annotated in 13 L. R. A. (N. S.) 179, on injunction against repeated trespass.]

(e) A bill to restrain an inequitable partition by co-tenants, and to have an equitable lien declared in favor of plaintiff, is not insufficient, for want of necessary parties defendant, because one of the co-tenants, who had executed a deed of trust of his interest for the benefit of creditors, was not named, where all parties having an interest in the land were joined, and the trustee for creditors also was made a party.—*Williams v. Harlan*, 88 Md. 1, 41 Atl. 51, 71 Am. St. Rep. 394.

(f) Where plaintiff, a coal-mining company, had a tramroad connecting with the railroad of defendant, and was dependent entirely on the latter for means of transporting its coal to market, it suffered special damages, so as to entitle it to maintain injunction proceedings to prevent defendant from charging any higher toll for transportation over its road than that prescribed by act 1876, c. 64.—*American Coal Co. v. Consolidation Coal Co.*, 46 Md. 15. [Cited and annotated in 33 L. R. A. 184, on legislative power to fix tolls, rates, or prices.]

(g) Where complainants, claiming to be stockholders of a corporation, have failed to comply with the conditions and terms of their subscriptions, without any fault on the part of the corporation or its officers, they have no such interest as will entitle them to maintain injunction proceedings to prevent corporate acts.—*Bussey v. Hooper*, 85 Md. 15, 6 Am. Rep. 350. [Cited and annotated in 47 L. R. A. 250, on effect of transfer of stock on liability for unpaid subscription.]

(h) By act 1833, c. 187, the association of delegates chosen by the several fire companies of the city of B. were incorporated with power to provide a fund applicable to the relief of disabled firemen, and invest the same in such manner as they should deem most safe and productive. Under this act \$12,000 was invested in city stock. In 1860 a resolution was passed by the corporation to sell and dispose of the available stock of the department, and divide the proceeds, together with the cash on hand, among the fire companies composing the department. *Held*, that plaintiffs, two of whom were delegates from, and the other a member of, fire companies in association with said department, had sufficient interest to enable them to maintain a bill for injunction to restrain execution of such resolution.—*Baltimore United Fire Dept. v. Creamer*, 17 Md. 243.

(i) A railroad company declared an extra dividend, payable on a certain day in certificates of indebtedness, bearing interest and convertible after a certain date into stock. On a bill filed by certain stockholders against the company, an injunction was granted restraining the issue of this dividend. *Held*, that other stockholders, alleging that their

rights and interests were injuriously affected by the continuance of the injunction, were necessary parties before final decree could be made.—*Gregg v. City of Baltimore*, 14 Md. 479.

(j) On a bill filed by stockholders against a railroad company, an injunction was granted restraining the issuance of a certain dividend. Defendant answered, and moved for the dissolution of the injunction, but, while the argument on this motion was progressing, asked leave to withdraw its answer and dismiss the motion, which was granted. A petition was then filed by certain other stockholders of the company, alleging that their rights and interests were injuriously affected by the continuance of the injunction, and asking leave to appear and be made defendants and to move for its dissolution. *Held*, proper to refuse such leave, but that such persons would be entitled to be heard as parties before final decree.—*Gregg v. City of Baltimore*, 14 Md. 479.

(k) Where plaintiff leased a building to the postmaster of a city to be used as a post office, neither the postmaster general nor the United States were necessary parties to an action for an injunction to prevent a sublessee from converting the premises into a beer saloon.—*Maddox v. White*, 4 Md. 72, 59 Am. Dec. 67.

(l) A lessor may maintain a bill to enjoin a sublessee from using the premises in a manner inconsistent with the provisions of the lease, without making the lessee a party.—*Maddox v. White*, 4 Md. 72, 59 Am. Dec. 67.

(m) The power of the court to grant injunctions to restrain creditors from proceeding at law against an executor after a decree for an account is not confined to cases in which the application is made by the executor, but extends to applications by the heir, or by another creditor of a common legatee, or perhaps by a residuary legatee.—*Boyd v. Harris*, 1 Md. Ch. 466. [Cited and annotated in 30 L. R. A. 140, on injunction against execution sales or other proceedings under final process; in 61 L. R. A. 385, on effect of death after judgment on remedy by execution.]

(n) Although the grant of a right to erect wharves and employ steamboats, if destruc-

tive of the paramount interest of general navigation and fishing may be void, yet it furnishes no ground for an injunction at the suit of a private individual.—*Delaware & Md. R. Co. v. Stump*, 8 G. & J. 479, 29 Am. Dec. 561. [Cited and annotated in 14 L. R. A. 386, on prescriptive rights of fishery; in 40 L. R. A. 640, on right to erect wharves; in 60 L. R. A. 496, 524, on right to fish; in 17 L. R. A. (N. S.) 1236, on injunction as to hunting or fishing on navigable waters; in 38 L. R. A. (N. S.) 767, on private right of action for obstruction of navigable stream.]

(o) A bill to restrain the voting of certain shares of stock, which it was alleged had been transferred without consideration to divers unknown persons from whom certain stockholders had taken powers of attorney, authorizing them to vote such stock at their discretion, made parties the officers and directors of the corporation and the judges of the election. *Held*, that the bill was not defective for failure to join the unknown transferees of the shares.—*Campbell v. Poultney*, 6 G. & J. 94, 26 Am. Dec. 559. [Cited and annotated in 29 L. R. A. 848, on right to vote by proxy in private corporations.]

### § 115. Process and appearance.

#### Cross-Reference.

Notice of application for temporary injunction, see post, § 143.

### § 116. Pleading.

#### Cross-References.

Aider by pleading of adverse party, see "Pleading," § 403.

Cross-bill, see "Equity," § 197.

To restrain assessment for taxation, see "Taxation," § 498.

### § 117.—Allegations in general.

### § 118.—Bill, complaint, or petition.

#### Cross-References.

See post, § 145.

Use and effect on motion to vacate or dissolve temporary injunction, see post, § 171.

Multifariousness, see "Equity," §§ 148-150.

To restrain foreclosure of mortgage, see "Chattel Mortgages," § 256.

(a) Where the application for an injunction is based upon the contents of a written instrument presumed to be in the possession of complainant, it or a copy should be filed with the bill, or its nonproduction satisfactorily accounted for.—*Washington County Water Co. v. Mayor and Council of Hagerstown*, 122 Md. 252, 89 Atl. 500.



(b) A bill by an incorporator of a railroad company to enjoin payment to it of money paid in on subscriptions for stock *held* not to show such an interest in the subject of the suit as to entitle plaintiff to the relief sought.—*Hollomon v. Baltimore & V. R. Co.*, 122 Md. 628, 90 Atl. 844.

(c) The mere allegation in a suit for an injunction that irreparable loss and injury will ensue is not sufficient, unless such facts be stated as will satisfy the court that the apprehension is well founded.—*Fowler v. Pendleton*, 121 Md. 297, 88 Atl. 124.

(d) Where a hotel company, applying for an injunction against the prosecution of owners and lessees of gambling machines, in its bill stated that it had contracted with one P. that he should have the exclusive right to operate gambling machines on its property for ten years, and that it got a certain percentage of the gains, but which did not state that P. had complied with an ordinance requiring a license, or state what amount said plaintiff would lose by the prosecution, or set out the contract with P., a court is not warranted in issuing an injunction.—*Chesapeake Beach Hotel Co. v. Hall*, 121 Md. 643, 89 Atl. 445.

(e) Allegations of a bill to enjoin the closing of a road *held* not to show any right to relief on the ground of fraud or conspiracy on the part of the county commissioners or parties signing a notice for the closing of the road.—*Jay v. Harford County Com'rs*, 120 Md. 49, 87 Atl. 521.

(f) A bill praying for an injunction must make a full and frank disclosure of all of the facts without concealing any facts showing the real situation.—*McDowell v. Biddison*, 120 Md. 118, 87 Atl. 752.

(g) The rules applying in case of a suit for specific performance apply equally to a case for a bill for perpetual injunction when the injunction accomplishes all of the objects which could be accomplished by a successful prosecution of a bill for specific performance.—*McDowell v. Biddison*, 120 Md. 118, 87 Atl. 752.

(h) In a suit to restrain a water company from violating a contract with the city, the bill was demurrable for failure to file a

schedule of rates attached to and a part of the contract.—*Washington County Water Co. v. City of Hagerstown*, 116 Md. 497, 82 Atl. 826, Ann. Cas. 1913C, 1022.

(i) A bill by the mayor and council of a city to restrain a water company from violating a contract for water supply *held* not demurrable for failure to file the water company's charter as an exhibit; the charter being a matter of record.—*Washington County Water Co. v. City of Hagerstown*, 116 Md. 497, 82 Atl. 826, Ann. Cas. 1913C, 1022.

(j) A bill by an owner of real property to enjoin his grantor and the grantor's assignees from further trespass alleged that one of the defendants, an assignee of plaintiff's grantor, had entered upon the property and taken up a 15-inch sewer pipe for a distance of about 60 feet, and laid in its place an 18-inch pipe, and left upon the property an open connection to the pipe line in which he built a brick wall, and that the other defendants were laying pipe to carry sewage from tracts of land being developed beyond the land of the grantor adjacent to such property so as to increase the easement reserved to the plaintiff's grantor, and that the trespass upon plaintiff's property was not susceptible of adequate compensation at law, and would cause irreparable damage unless restrained. *Held*, that under the settled rule that, if trespass to real property be temporary and adequate compensation can be obtained at law, equity will not interpose, the averments were indefinite as to the remedy at law, and were insufficient to show equitable grounds warranting an injunction; the mere allegation of irreparable damage not being sufficient without stating facts which would satisfy the court that such apprehension was well founded.—*West Arlington Land Co. v. Flannery*, 115 Md. 274, 80 Atl. 965.

(k) Where complainants's right to an injunction is based on a written instrument in her possession, or to which she has ready access, the instrument or a copy should be filed with the bill.—*Didier v. Merryman*, 114 Md. 434, 79 Atl. 597.

(l) Where complainant's right to an injunction restraining defendant's use of a

drain appurtenant to complainant's property was fully supported by her possession of the premises and appurtenant drain, her bill was not defective for failure to attach the documents evidencing her right to occupy the premises as life tenant.—*Didier v. Merryman*, 114 Md. 434, 79 Atl. 597.

(m) Where complainant, in a suit to restrain defendant's use of a drain, alleged complainant's possession of the premises to which the drain was appurtenant, and her actual user of the drain for many years, and that defendant, without lawful right, but willfully intending to trespass on complainant's premises, had made a connection with the drain described, the bill was not demurrable for failure to show the nature of complainant's interest in the drain.—*Didier v. Merryman*, 114 Md. 434, 79 Atl. 597.

(n) A bill for an injunction must present a full and candid disclosure of all the facts, and the *res gestæ* must be represented as they actually are.—*Euler v. Schroeder*, 112 Md. 155, 76 Atl. 164.

(o) If a turnpike company's right of way, sought to be protected by an injunction, is claimed by the plaintiff under a deed or other writing from a third person, the deed, or a copy of it, should be filed with the bill, or sufficient reason for its nonproduction given, and a bill which is defective in this respect is demurrable.—*Stinson v. Ellicott City & Clarksville Co.*, 109 Md. 111, 71 Atl. 527.

(p) The general rule that a bill in equity must contain a clear statement of the facts upon which plaintiff relies for relief is applied rigorously to a bill for an injunction.—*Stinson v. Ellicott City & Clarksville Co.*, 109 Md. 111, 71 Atl. 527.

(q) If a turnpike company's right of way, sought to be protected by an injunction, is not claimed under a deed or other writing, the plaintiff's bill should state how it acquired its rights, and what they were; and, if the plaintiff's rights as against the defendant, and the width of its right of way, are left in doubt by the bill, it is demurrable.—*Stinson v. Ellicott City & Clarksville Co.*, 109 Md. 111, 71 Atl. 527.

(r) A party's right to an injunction ought not to be left in doubt by the bill, and the

defendant ought not to be required to guess what plaintiff relies on.—*Stinson v. Ellicott City & Clarksville Co.*, 109 Md. 111, 71 Atl. 527.

(s) A bill for injunction by a public service electric company by merely showing the beginning of a new line, and interference by defendant with the erection thereof, and alleging generally that irreparable injury will result, does not show the injury is or is likely to be irreparable.—*Consolidated Gas, E. L. & P. Co. v. Northern Cent. Ry. Co.*, 107 Md. 671, 69 Atl. 518.

(t) The bill to enjoin interference with the erection by plaintiff of poles along the line of defendant railway company is insufficient in not showing a right to use the land for the purpose of erecting and maintaining the poles, it alleging, and being accompanied by, nothing but an agreement with the landowners, which purports to grant to plaintiff "permission," merely, to erect and maintain the poles—a mere license; and which, if considered as attempting to grant a right to use the land as a permanent right, would be ineffectual for that purpose, not being a deed.—*Consolidated Gas, E. L. & P. Co., v. Northern Cent. Ry. Co.*, 107 Md. 671, 69 Atl. 518.

(u) In a suit for an injunction, a mere allegation that irreparable injury will ensue is insufficient, unless facts are stated showing the apprehension to be well founded.—*Carswell v. Swindell*, 102 Md. 636, 62 Atl. 956. [Cited and annotated in 12 L. R. A. (N. S.) 60, on effect of legal remedy on equitable jurisdiction to remove cloud.]

(v) Complainant in a bill for an injunction must make a full and candid disclosure of all the facts on which he relies for relief.—*Moffat v. Calvert County Com'rs*, 97 Md. 266, 54 Atl. 960.

(w) A bill for an injunction to compel defendant to restore to plaintiff's land a building erected thereon by defendant and removed by him, which fails to show in what manner the building was annexed to the land, is demurrable.—*Bowie v. Smith*, 97 Md. 326, 55 Atl. 625.

(x) A bill for an accounting as to certain leases, and the sale of certain ground rents, alleging that during these transactions de-

fendant procured plaintiff to indorse a promissory note, which was negotiated and had been renewed, and asking that defendant be enjoined from collecting the note pending the cause, not alleging that the note was given in connection with the contract under which the accounting is asked, will be dismissed as to the note.—*Bruns v. Spalding*, 90 Md. 349, 45 Atl. 194.

(y) A bill to enjoin a sheriff from ejecting plaintiff from a house and premises under a writ is insufficient when it charges that defendant, in whose favor the writ issued, "has illegally, wrongfully, and unjustly procured a writ" to eject plaintiff, without showing the nature of the writ, or filing a copy, or stating in what right the premises are demanded, or how he holds.—*Lamm v. Burrell*, 69 Md. 272, 14 Atl. 682.

(z) To entitle one to an injunction against a proceeding at law, the substance of the ground of relief must not only be fully alleged, but the bill must show grounds upon which the action at law may be sustained; otherwise it is demurrable.—*Worthington v. Lee*, 61 Md. 530.

(aa) A bill seeking to enjoin the directors of a building association from any further management of its affairs on the ground that they had fraudulently mismanaged its affairs and disregarded its by-laws, permitted the embezzlement of money, and loaned money without security, without pointing out particular facts, charging specific fraud on the part of present officers, was insufficient.—*Frostburg Bldg. Ass'n v. Stark*, 47 Md. 338. [Cited and annotated in 20 L. R. A. 214, on power to appoint corporate receivers where no other relief asked.]

(bb) Where a complainant, attempting to enjoin the stockholders of a corporation from reorganizing, omits from his bill material facts of which he has knowledge, such omission is sufficient to disentitle him to the summary process of the court.—*Sprigg v. Western Tel. Co.*, 46 Md. 67.

(cc) A bill charged that the complainant was in peaceable possession under a lease, and had established a good restaurant business; but, without averring that he had performed all the covenants incumbent upon him, he prayed that the lessor might be en-

joined from demolishing the building. *Held*, that an injunction was properly refused.—*Johnston v. Glenn*, 40 Md. 200.

(dd) To warrant the court in issuing an injunction, the bill should fully and fairly state the case within the knowledge of the plaintiff, so that the court may see that prima facie the right to relief is fair in the aspect in which it is presented to the court. There can be no concealment.—*Johnston v. Glenn*, 40 Md. 200.

(ee) Where a bill by a lessee for injunction to prevent his landlord from proceeding by distraint to collect certain rent charged that the rent had been paid, and that such payment was evidenced by an account furnished by the landlord to plaintiff, the account should have been exhibited, or some satisfactory reason assigned for its nonproduction; and the failure to do either was fatal to plaintiff's right.—*Banks v. Busey*, 34 Md. 437.

(ff) Where a defendant bank advanced to a borrower more money than it could lawfully loan, and took collateral securities therefor, and a stockholder thereof filed a bill for injunction to restrain it from misapplying its funds by prosecuting suits to recover the value of the securities, alleging that the contract of loan was illegal and void, the failure of plaintiff to file copies of the pleadings and proceedings in the suits being prosecuted by the bank justified the court in refusing the injunction.—*Shoemaker v. National Mechanics' Bank*, 31 Md. 396, 100 Am. Dec. 73.

(gg) Where, upon an application for an injunction, the right upon which the complainant's equity rests is derived from an ordinance authorizing city officers, upon certain conditions, to enter into a written contract giving the use of certain wharves and piers for a ferry, the complainant must exhibit the writing or a copy thereof with his bill, or assign a satisfactory reason for its nonproduction, or the injunction will be refused.—*Hankey v. Abrahams*, 28 Md. 588.

(hh) A bill in equity by an heir at law for the assignment of dower to the widow of the deceased ancestor prayed for an injunction and the appointment of a receiver of the

rents, issues, and profits of the real estate supposed to be subject to dower, but contained no allegation that the rents would be lost irretrievably, or in what manner they were jeopardized, nor did it appear that complainant had not an adequate remedy at law for such of the rents as he might be entitled to. *Held*, that the allegations of the bill were insufficient to warrant the issue of an injunction.—*Knighton v. Young*, 22 Md. 359.

(ii) A bill alleging a prescriptive right of way over defendant's land to the public road and market, and that the complainant has no other outlet whereby to convey his produce to market, except by a circuitous and inconvenient route over the lands and by the permission of persons who might at any time withhold such permission, sufficiently shows that the mischief will be irreparable to justify the issuing on an injunction restraining the obstruction of such way.—*Shipley v. Caples*, 17 Md. 179. [Cited and annotated in 7 L. R. A. (N. S.) 83, on injunctive relief as to fences or gates.]

(jj) Where a creditor asks an injunction to prevent proceedings on a bond alleged to have been fraudulently issued by his debtor, he must distinctly set forth his claim in the complaint.—*Mahaney v. Lazier*, 16 Md. 69. [Cited and annotated in 30 L. R. A. 236, on injunction against judgments by confession.]

(kk) Where a creditor asks an injunction to prevent proceedings on a bond alleged to have been fraudulently issued by his debtor, he must file exhibits showing the existence of his claim.—*Mahaney v. Lazier*, 16 Md. 69. [Cited and annotated, see supra.]

(ll) It is no objection to the form of a bill for injunction to restrain a trespass on the ground of irreparable mischief that it charges the injury to be "almost," instead of "absolutely," irreparable.—*Davis v. Reed*, 14 Md. 152. [Cited and annotated in 22 L. R. A. 235, on injunction against trespass to cut timber.]

(mm) The omission of the charge of irreparable mischief would not be a defect in a bill otherwise good, because the court must be satisfied, from a statement of the grievances, that the injury would be irreparable, and it is enough if the court can discover

this from the allegation of facts.—*Davis v. Reed*, 14 Md. 152. [Cited and annotated, see supra.]

(nn) An injunction the claim to which depends on an indebtedness to the complainants which is evidenced in writing will not be granted unless such written evidence be submitted with the bill, of a satisfactory reason for its nonproduction be given.—*Nusbaum v. Stein*, 12 Md. 315.

(oo) On a bill for an injunction, the mere allegation that irreparable injury will result to complainant unless protection is extended to him is insufficient; but the facts must be stated, that the court may see that the apprehension of irreparable mischief is well founded.—*Amelung v. Seekamp*, 9 G. & J. 468. [Cited and annotated in 22 L. R. A. 238, on injunction against trespass to cut timber.] *Carlisle v. Stevenson*, 3 Md. Ch. 499. [Cited and annotated in 20 L. R. A. 164, on power to grant mandatory injunctions; in 13 L. R. A. (N. S.) 175, on injunction against repeated trespass.] *Chesapeake & O. Canal Co. v. Young*, 3 Md. 480; *Green v. Keen*, 4 Md. 98. [Cited and annotated in 22 L. R. A. 235, 238, on injunction against trespass to cut timber.] *Roman v. Strauss*, 10 Md. 89. [Cited and annotated in 8 L. R. A. (N. S.) 227, on right of action for highway obstructions, hindering access to property; in 9 L. R. A. (N. S.) 497, on right to damages for nonadjacent obstruction of street or highway by railroad.]

(pp) Where a bill prays for relief by way of injunction, and does not pray for the process of injunction, the process cannot be granted.—*Union Bank v. Kerr*, 2 Md. Ch. 460.

(qq) Where an injunction is sought against trespasses, the complainant must not only allege that the trespass goes to the destruction of the inheritance, or that the mischief will be irreparable, but facts must be stated to show that the apprehension of further acts of trespass are well founded.—*Hamilton v. Ely*, 4 Gill 34. [Cited and annotated in 22 L. R. A. 238, on injunction against trespass to cut timber; in 13 L. R. A. (N. S.) 176, on injunction against repeated trespass.]

(rr) To enjoin a trespass in the cutting of wood and quarrying of stone, the petition must allege the defendant's insolvency.—*Hamilton v. Ely*, 4 Gill 34. [Cited and annotated, see supra.]

(ss) On a bill filed in one state to enjoin a citizen thereof from prosecuting proceedings instituted by him in another state, an exhibit of the proceedings sought to be enjoined should be filed.—*Buchanan v. Torrance*, 11 G. & J. 342.

(tt) In an application for injunction, the mere oath of the party as to the existence of a debt, written evidence of which he holds, will not be regarded as proof, but the written instrument should be exhibited with the bill, or a reason assigned for its nonproduction.—*Union Bank v. Poultney*, 8 G. & J. 324. [Cited and annotated in 30 L. R. A. 128, on injunction against execution sales or other proceedings under final process.]

### § 119.—Plea or answer and subsequent pleadings.

#### Cross-References.

Use and effect on motion to dissolve, see post, § 172.

Departure, see "Pleading," § 180.

Duplicity, see "Pleading," § 99.

(a) Equity Rule 22 (Code 1904, art. 16, § 153), provides that, if on the hearing any plea or demurrer is overruled, unless the court is satisfied that it was intended for vexation or delay, defendant shall be required to answer the bill, or so much thereof as may be covered by the plea or demurrer, at such time as can be reasonably done, or the bill shall be taken as against him pro confesso, and such decree shall also be made when the court shall be satisfied that the plea or demurrer was interposed for vexation or delay, or was frivolous or unfounded. *Held*, that, where defendant demurred to a bill to restrain defendant's use of a drain appurtenant to complainant's property as an alleged trespass, and filed with the demurrer an affidavit that it was not intended for delay, the court improperly granted an absolute injunction on overruling the demurrer, without offering defendant an opportunity to answer.—*Didier v. Merryman*, 114 Md. 434, 79 Atl. 597. (See Code 1911, art. 16, § 162.)

(b) A defendant may answer a bill at once, and so, if his answer be sufficient for that purpose, prevent the granting of an injunction.—*Hall v. McPherson*, 3 Bland 529.

### § 120.—Demurrer.

#### Cross-Reference.

See ante, § 119.

(a) Alleged omissions in exhibit filed with bill for an injunction held not to render the bill demurrable, and the objection could be raised only by answer.—*Washington County Water Co. v. Mayor and Council of Hagerstown*, 122 Md. 252, 89 Atl. 500.

(b) Code 1888, art. 75, § 119, relating to the issuance of injunctions in certain cases, provides that defendant may demur to so much of the declaration as claims the writ, and such demurrer shall raise the question whether plaintiff is entitled to injunctive relief, "but shall be subject to all rules governing demurrers at law, both as to the proceedings thereon and thereafter." *Held*, that this is a special demurrer, and a general demurrer, whether interposed directly to the declaration, or to some subsequent pleading, will not raise the question.—*Chesapeake & P. Tel. Co. v. Mackenzie*, 74 Md. 36, 21 Atl. 690, 28 Am. St. Rep. 219. (See Code 1911, art. 75, § 128.) [Cited and annotated in 24 L. R. A. 721, on telegraph or telephone as additional burden on highway.]

(c) Where, after demurrer to a bill for an injunction, permission is granted to amend the bill, and the amended bill makes out a case for an injunction, it is error for the court to sustain the demurrer. A special order should be issued allowing the amendment and granting the injunction.—*Keerl v. Keerl*, 28 Md. 157.

### § 121.—Amended and supplemental pleadings.

#### Cross-Reference.

Supplemental bill for injunction, see "Equity," § 295.

### § 122.—Verification.

#### Cross-Reference.

See post, § 145.

(a) An affidavit to a bill for an injunction made by one not a party to the cause, who simply swears that the matters and things stated in the bill are true to the best of his knowledge and belief, but does not inform the court as to the source of his information, or what knowledge he has on the subject, is insufficient.—*Moffat v. Calvert County Com'rs*, 97 Md. 266, 54 Atl. 960.

(b) An affidavit to a bill praying an in-

junction, sworn to by plaintiff's attorney, which fails to state that he speaks from personal knowledge, or which fails to set out the source of his information if his knowledge is not personal, is insufficient to justify issuance of the injunction.—*Fowble v. Kemp*, 92 Md. 630, 43 Atl. 379.

(c) When there was no evidence to show, in the case of an affidavit to a bill for an injunction made before a notary public of the District of Columbia, that the notary had legal power to administer the oath, it was held that it was to be presumed, from the certificate of the administration of the oath, and authentication thereof by the notarial seal, that the acts were performed in the regular exercise of powers legally conferred.—*Conolly v. Riley*, 25 Md. 402. [Cited and annotated in 21 L. R. A. 470, on presumption as to law of other states.]

(d) Under Code 1860, art. 16. § 103, providing that it shall not be necessary for any defendant to make oath to his answer, unless required by complainant, an answer without oath to a bill for injunction not requiring an answer under oath is sufficient to put the case at issue.—*Mahaney v. Lazier*, 16 Md. 69. (See Code 1911, art. 16, § 168.) [Cited and annotated in 30 L. R. A. 236, on injunction against judgments by confession.]

(e) The purpose of an affidavit to verify the allegations of a bill for an injunction is to obtain the confidence of the court, and this may be obtained by documentary evidence as well as by affidavit, as, for example, by an authenticated copy of the will under which the complainants claim their emancipation from slavery.—*Negro Charles v. Sheriff*, 12 Md. 274. [Cited and annotated in 30 L. R. A. 118, on injunction against execution sales or other proceedings under final process.]

(f) Slaves are incapable of making affidavits, and it is therefore no ground for refusing an injunction on a bill filed by such persons, that the bill is not verified by affidavit.—*Negro Charles v. Sheriff*, 12 Md. 274. [Cited and annotated, see supra.]

(g) An affidavit to a bill for injunction "that the facts stated in the bill are true to the best of his [complainant's] knowledge and belief" is sufficient.—*Triebert v. Burgess*, 11 Md. 452. [Cited and annotated in 2 L. R. A. (N. S.) 222, on uncertainty as to

time as affecting right to specific performance; in 6 L. R. A. (N. S.) 588, on specific performance of contract to give security.]

### § 123.—Issues, proof, and variance.

(a) Where the answer to a bill for an injunction neither admits nor denies its allegations, they must be proved on the final hearing.—*Briesch v. McCauley*, 7 Gill 189.

[Cited and annotated in 30 L. R. A. 787, on injunction against judgments obtained by fraud, accident, mistake, surprise, and duress; in 31 L. R. A. 765, on injunction against judgments for defenses existing prior to rendition; in 32 L. R. A. 324, on equitable jurisdiction as to injunctions against judgments.]

### § 124. Evidence.

### § 125.—Pleadings as evidence.

#### Cross-References.

Effect of answer denying title, see ante, § 36.

On motion to vacate or dissolve temporary injunction, see post, § 172.

(a) An injunction will not be granted, if defendant asserts positively that he does not intend to do the act, and there is no evidence to the contrary.—*Whalen v. Dalashmutt*, 59 Md. 250.

(b) One who had been, and still claimed to be, the state comptroller, brought an information and prayed for an injunction against a rival claimant and the state treasurer, on the ground that, by means of that claim and of acts and threats of the treasurer in support of it, the fiscal interests of the state were placed in imminent hazard. Upon a distinct and positive denial of all this by the rival claimant, the court refused to grant the injunction.—*State v. Jarrett*, 17 Md. 309. [Cited and annotated in 50 L. R. A. (N. S.) 381, on death, or failure to qualify, of person elected.]

(c) Where the allegation in a bill to enjoin a judgment that the same was recovered by fraud was denied by the answer, and not established by proof, an injunction would not issue.—*Briesch v. McCauley*, 7 Gill 189. [Cited and annotated, see supra, § 123.]

(d) A bill for relief against a judgment at law rendered by default, alleging that the writ was not served on the complainant, that an attorney entered his appearance for him without his knowledge, and that judgment was rendered without the knowledge of the attorney, and showing a good defense at law, the allegations being wholly unsupport-

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

ed by proof, was dismissed, and the injunction dissolved.—*Prather v. Prather*, 11 G. & J. 110. [Cited and annotated in 31 L. R. A. 770, on injunction against judgments for defenses existing prior to rendition; in 32 L. R. A. 323, on equitable jurisdiction as to injunctions against judgments.]

(e) Where an answer is full, clear, and explicit, denying expressly every matter on which complainant grounds his right to injunction, and no proof is offered, the bill will be dismissed.—*Whetcroft v. Christie*, 4 H. & McH. 385.

#### § 126.—Presumptions and burden of proof.

(a) At a final hearing of a bill for injunction the defendant need not prove his allegations, in avoidance, in the first instance; but the complainant must establish his case, and all his allegations not proved are taken against him.—*Hutchins v. Hope*, 7 Gill 119.

#### § 127.—Admissibility.

##### Cross-Reference.

Competency of witnesses, see "Witnesses," § 130.

#### § 128.—Weight and sufficiency.

##### Cross-Reference.

Doubt as to title of right, see ante, § 36.

(a) The upper floor of one wing of an L-shaped building fronting on two streets was leased by plaintiff under a contract requiring elevator service. The building had one elevator in such wing and one near the junction of the two wings, both accessible to the plaintiff, as well as certain stairways adjacent thereto. Thereafter the remaining portion of such wing was rented as a hotel, and extensive modifications were made therein, which made the entrance to the elevator of the wing more inconvenient, and the stairway was closed, and a directory board was removed. During such improvements plaintiff attempted to transfer his lease to the lessee of the proposed hotel. Evidence as to complaints made by plaintiff during progress of the work was conflicting. Held, that an injunction requiring the lessee of the hotel to construct a private entrance to the elevator for the benefit of plaintiff, or to put the entrance in its original condition, was erroneous, since the facts were not suffi-

cient to warrant equitable relief.—*Maryland Hotel Co. v. Baltimore Engraving Co.*, 92 Md. 710, 48 Atl. 716; *Evening News Pub. Co. v. Same*, Id.

#### § 129. Dismissal before hearing.

##### Cross-Reference.

Effect as dissolving injunction, see post, § 181.

(a) Where an injunction asked for is the primary relief demanded, and not merely ancillary, and on hearing an application to dissolve a temporary injunction it is determined that plaintiff is not entitled to injunctive relief, it is proper for the court to dismiss the bill on the merits.—*Davis v. Baltimore & O. R. Co.*, 102 Md. 371, 62 Atl. 572.

(b) Where plaintiff filed a bill for an injunction as the primary and principal relief, and the case was fully heard on a motion to dissolve a temporary injunction, on the bill, answer, and testimony, and it appeared that plaintiff was not entitled to an injunction, and could obtain relief at law, defendant was not only entitled to a dissolution of the temporary injunction, but also to a decree dismissing the bill.—*Gulick v. Fisher*, 92 Md. 353, 48 Atl. 375. [Cited and annotated in 7 L. R. A. (N. S.) 81, on injunctive relief as to fences or gates.]

(c) Where the injunction asked for in a bill is ancillary to the relief prayed, and the cause is set down for hearing upon the motion to dissolve, if the injunction is refused the bill should not be dismissed; the complainant being entitled to have the bill retained and proceed to final hearing.—*Kelly v. City of Baltimore*, 53 Md. 134. [Cited and annotated in 36 L. R. A. (N. S.) 11, 14, 27, 28, on taxpayer's right to enjoin unlawful municipal expenditures; in 38 L. R. A. (N. S.) 657, on discretion in choosing between bidders for public contract.]

(d) An answer to a bill for injunction stated that the respondent "does not believe and denies" the material averment of the bill. Cause was heard upon bill and answer, and complainant failed to support the averments of his bill by proof. Held, that the temporary injunction should be dissolved and the bill dismissed.—*Philadelphia Trust, Safe-Deposit & Ins. Co. v. Scott*, 45 Md. 451.

(e) Upon motion to dissolve an injunction,

a court of equity will dismiss the bill where it appears from the answer that the cause is in the possession of another court of concurrent jurisdiction.—*Withers v. Denmead*, 22 Md. 135.

(f) Where defendant moves only for the dissolution of an injunction, and the cause is heard on that motion, and is not set down for final hearing, it is error to dismiss the bill.—*Dorsey v. Hagerstown Bank*, 17 Md. 408.

### § 130. Trial or hearing.

#### Cross-References.

On motion to vacate, see post, § 175.

Conformity of findings of court to pleadings, see "Trial," § 396.

Reception of evidence, see "Trial," §§ 377, 379.

Submission of special issues to jury in general, see "Trial," §§ 370, 374.

(a) An application for an injunction may be heard without answers being filed by those parties who are merely formal.—*Camp No. 6, Patriotic Order, S. of A. v. Arrington*, 107 Md. 319, 68 Atl. 548. [Cited and annotated in 52 L. R. A. (N. S.) 818, on necessity of exhausting remedies within order, against expulsion or suspension of member from mutual benefit association.]

(b) An application for an injunction goes to the sound conscience of the court, acting upon all the circumstances of each particular case; and the court, having the right to require a full and cordial disclosure of all the facts, may refuse to exercise its extraordinary power by writ of injunction if the proceedings are such as to show that a full disclosure has not been made.—*Canton Co. v. Northern Cent. Ry. Co.*, 21 Md. 383.

(c) The chancellor has the right to require a full and candid disclosure of all the facts; and, if there appears in the proceedings sufficient to show that this has not been made, he may, in the exercise of his discretion, refuse to grant an injunction.—*Reddall v. Bryan*, 14 Md. 444, 74 Am. Dec. 550. [Cited and annotated in 46 L. R. A. (N. S.) 1075, on right to exercise eminent domain as affected by fact that principal benefit will be derived out of state; in 58 L. R. A. 242, on acquisition of water supply by eminent domain; in 7 L. R. A. (N. S.) 52, on injunctive relief as to fences or gates; in 22 L. R. A. (N. S.) 24, 156, 157, on judicial power over eminent domain.]

(d) Where plaintiff in injunction proceed-

ings brings on the cause for hearing on bill and answer, he thereby admits the answer to be true.—*McKim v. Odom*, 3 Bland 407. [Cited and annotated in 4 L. R. A. (N. S.) 1003, on punishment of corporation for contempt.]

### § 131. Reference.

(a) Though act 1835, c. 380, is no longer in force, yet, by consent, proof may be taken before any one agreed upon, to be used at the hearing in case of injunction.—*Steigerwald v. Winans*, 17 Md. 62.

## IV. PRELIMINARY AND INTERLOCUTORY INJUNCTIONS.

#### Cross-References.

Enforcement or violation of regulations relating to carriers, see "Carriers," § 18.

In action by owner of property taken for public use, see "Eminent Domain," § 292.

In action for equitable relief against judgment, see "Judgment," § 459.

In action for infringement of copyright, see "Copyrights," § 85.

In action for infringement of patent, see "Patents," §§ 294-308.

In action for infringement of trade-mark or trade-name, or for unfair competition, see "Trade-Marks and Trade-Names," § 95.

In action to restrain liquor nuisance, see "Intoxicating Liquors," § 273.

In action to restrain nuisance, see "Nuisance," §§ 31, 80.

Restraining collection of municipal assessments, see "Municipal Corporations," § 538.

Restraining illegal combination, see "Monopolies," § 24.

Restraining relocation of railroad crossing, see "Railroads," § 94.

Review of decisions, see "Appeal and Error," §§ 100, 190, 339, 347, 358, 726, 954.

Review of decisions, jurisdiction of federal Circuit Court of Appeals, see "Courts," § 407.

Review of decisions, jurisdiction of federal Supreme Court, see "Courts," § 407.

Scope and extent of review by federal Circuit Court of Appeals, see "Courts," § 407.

### (A) GROUNDS AND PROCEEDINGS TO PROCURE.

#### Cross-References.

Protection of property pending litigation, see ante, § 38.

Pending suit for establishment or protection of easement, see "Easements," § 61.

### § 132. Nature and scope of provisional remedy.

(a) The erection of a building, the thing sought to be restrained, having progressed



some way before plaintiff applied for an injunction, *held*, that defendant should not be required, upon a temporary injunction being granted pending the determination of the question of title in an action at law, to remove the part of the building already erected, unless it appeared that the safety of plaintiff's building was endangered.—*Clayton v. Shoemaker*, 67 Md. 216, 9 Atl. 635. [Cited and annotated in 59 L. R. A. 676, 677, 680, 691, 692, on liability for rent of premises occupied by receiver or assignee for creditors.]

(b) The object of a preliminary injunction is simply preventive, to maintain things as they are until the rights of the parties can be considered and determined after a full hearing.—*In re Murdock*, 2 Bland 461, 20 Am. Dec. 381. [Cited and annotated in 47 L. R. A. (N. S.) 1155, on mandatory injunction to restore status existing prior to violation of prohibitory injunction; in 7 L. R. A. (N. S.) 70, on injunctive relief as to fences or gates.] *Bosley v. Susquehanna Canal*, 3 Bland 63.

(c) An injunction on filing a bill before hearing ought to go no further than to prohibit defendant from doing something against equity and good conscience, and should not direct defendant to put complainant into possession of a benefit.—*Norwood v. Norwood*, 2 Bland 471, note.

### § 133. Mandatory injunction.

#### Annotation.

Right to mandatory injunction to restore status existing prior to violation of prohibitory injunction.—47 L. R. A. (N. S.) 1155, note.

As to power of equity to grant mandatory injunctions.—20 L. R. A. 161, note.

(a) A mandatory injunction will not be granted on preliminary application.—*Washington University v. Green*, 1 Md. Ch. 97. [Cited and annotated in 20 L. R. A. 169, on power to grant mandatory injunctions.]

### § 134. Right to temporary injunction in general.

#### Annotation.

Right to preliminary injunction which would have effect of transferring possession of property from defendant to plaintiff.—39 L. R. A. (N. S.) 31, note.

(a) Defendants in a suit for an injunction, who have denied, by answer, doing the acts sought to be restrained, cannot complain of an injunction pending the cause.—*My Maryland Lodge, No. 186, I. A. M. v. Adt*, 100 Md.

238, 59 Atl. 721, 68 L. R. A. 752. [Cited and annotated in 16 L. R. A. (N. S.) 85, 96, on legality of "secondary boycott" by labor union.]

(b) The right to an injunction is not ex debito justitiæ, but the application is addressed to the sound conscience of the chancellor acting upon all the circumstances belonging to each particular case.—*Reddall v. Bryan*, 14 Md. 444, 74 Am. Dec. 550. [Cited and annotated, see supra, § 130.]

### § 135. Discretion of court.

(a) The granting of a temporary injunction rests in the discretion of the court.—*McCreery v. Sutherland*, 23 Md. 471, 87 Am. Dec. 578. [Cited and annotated in 30 L. R. A. 119, on injunction against execution sales or other proceedings under final process.] *Shoemaker v. National Mechanics' Bank*, 31 Md. 396; *Frostburg Bldg. Ass'n v. Stark*, 47 Md. 338. [Cited and annotated in 20 L. R. A. 214, on power to appoint corporate receivers where no other relief asked.] *Welde v. Scotten*, 59 Md. 72. [Cited and annotated in 30 L. R. A. 114, on injunction against execution sales or other proceedings under final process.]

### § 136. Grounds for temporary injunction.

(a) Where an owner of land contiguous to a railroad, under the claim that the railroad was encroaching upon his land, proceeded to cut away the toe of the embankment, or fill, of the railroad, thus rendering the roadbed unsafe for travel, the circumstances were such as to justify the issuance of a preliminary injunction pending litigation as to title.—*Baltimore & O. R. Co. v. Silbereisen*, 121 Md. 407, 88 Atl. 252, 89 Atl. 102.

(b) Where the contention between a railroad company and an owner of land adjoining its right of way was whether a strip of land, when truly surveyed and located, was within the railroad's or the adjoining owner's title papers, the title to the strip was involved and was not merely a confusion of boundaries.—*Baltimore & O. R. Co. v. Silbereisen*, 121 Md. 407, 88 Atl. 252, 89 Atl. 102.

(c) In cases where the title to property is in dispute, a temporary injunction is sometimes granted to preserve it until answer filed; but this is never done in Maryland, unless the damage complained of is intoler-

able, and the mischief irreparable, or where the trespass goes to the destruction of the thing.—*Chesapeake & O. Canal Co. v. Young*, 3 Md. 480.

**§ 137. Grounds for denial of temporary injunction.**

(a) Where a party has acquiesced for some years in the alleged trespass, it is a strong, if not insuperable, objection to any interference in his behalf by way of preliminary injunction.—*Amelung v. Seekamp*, 9 G. & J. 468. [Cited and annotated in 22 L. R. A. 238, on injunction against trespass to cut timber.]

**§ 138. Persons who may be restrained.**

(a) A preliminary injunction may issue against unknown persons.—*Campbell v. Poultney*, 6 G. & J. 94, 26 Am. Dec. 559. [Cited and annotated in 29 L. R. A. 848, on right to vote by proxy in private corporations.]

**§ 139. Authority of court or judge.**

*Cross-References.*

Authority of court commissioners, see "Court Commissioners," § 4.

Power of appellate court to issue, see "Appeal and Error," § 456.

**§§ 140-142. (See Analysis.)**

**§ 143. Notice of application.**

*Cross-Reference.*

In creditors' suit, see "Creditors' Suit," § 32.

(a) Upon application for an injunction the judge may properly postpone his decision until the parties to be affected by the injunction have been notified of the application and an opportunity given them to be heard.—*Barnum v. Gordon*, 28 Md. 85.

(b) An injunction may be granted upon the bill alone, supported by affidavit, before the subpoena has been served, in ordinary cases.—*Jones v. Magill*, 1 Bland 177.

(c) A court of equity will not enjoin proceedings at law on a mortgage before hearing the party against whom the injunction is prayed.—*Todd v. Pratt*, 1 H. & J. 465. [Cited and annotated in 31 L. R. A. 772, on injunction against judgments for defenses existing prior to rendition; in 32 L. R. A. 324, on equitable jurisdiction as to injunctions against judgments.]

**§ 144. Use and effect of bill, complaint, or petition.**

*Cross-Reference.*

On motion to dissolve, see post, § 171.

(a) A prayer for an injunction will sustain the issuance of a preliminary injunction.—*Shipley v. Western Maryland Tidewater R. Co.*, 99 Md. 115, 56 Atl. 968.

(b) Where a suit for an injunction is heard upon bill and exhibits, and is submitted after argument, if the bill does not present a proper case for an injunction it is proper to refuse the application and dismiss the bill.—*Bowie v. Smith*, 97 Md. 326, 55 Atl. 625.

(c) Money was loaned by a bank in excess of the amount it was allowed by law to lend, and for the loan collateral securities were taken. A stockholder of the bank filed a bill, alleging that the loan was illegal, the securities worthless, and praying for an injunction to restrain the bank from misapplying its funds by prosecuting suits to recover the value of the securities. Held, that the oath of the complainant as to the truth of the matters alleged in the bill, without other evidence, was insufficient to justify the court in granting the injunction sought. The complainant should have filed copies of the pleadings or proceedings as exhibits, in support of the averments in regard to the object and purposes of the suits sought to be enjoined.—*Shoemaker v. National Mechanics' Bank*, 31 Md. 396, 100 Am. Dec. 73.

(d) The usage and practice do not require other affidavits than that of the complainant to procure an injunction before answer, where the facts are in pais. If they rest in record, or depend upon written evidence, it seems that such documentary evidence as constitutes prima facie evidence of their truth, as office copies or short copies and docket entries, are required in addition in proof of such facts.—*Myers v. Amey*, 21 Md. 302.

(e) Allegations on information and belief, in a bill to prevent the disposition of a debtor's property on the ground of fraud in the assignment to a trustee, without stating where the information was obtained, are not sufficient to justify the granting of an injunction without notice to defendants.—*Blondheim v. Moore*, 11 Md. 365.

(f) On an ex parte application for an injunction upon bill alone, the injunction will not be refused for an apparent misnomer of

the defendant, as he may not, on coming in, wish to avail himself of the objection.—*Bosley v. Susquehanna Canal*, 3 Bland 68. [Cited and annotated in 61 L. R. A. 851, on construction and operation of canals.]

#### § 145. Affidavits for injunction.

##### Cross-Reference.

See ante, §§ 118, 122.

(a) Where an injunction affidavit shows on its face that it is not made by a party to the cause, but by one who could not know the facts except by hearsay, unless his means of knowledge is disclosed the affidavit is insufficient.—*Bowie v. Smith*, 97 Md. 326, 55 Atl. 625.

(b) Where an injunction affidavit was insufficient because it did not appear on its face that the knowledge of affiant was not hearsay, an affidavit to a petition to amend the bill, which referred merely to the things "stated in the petition," could not cure the defect in the original affidavit.—*Bowie v. Smith*, 97 Md. 326, 55 Atl. 625.

(c) Upon an application for an injunction, the replication has no effect, and the application will be considered upon the bill and the answer, so far as responsive thereto.—*Dougherty v. Piet*, 52 Md. 425.

(d) Where the existence of complainants' claims, or any of them, depend on a written instrument, which they are presumed to have in their possession, it should be produced and exhibited, or its nonproduction satisfactorily accounted for, to entitle them to a preliminary injunction.—*Laupheimer v. Rosenbaum*, 25 Md. 219.

(e) On an application for a preliminary injunction, answers filed before the hearing the existence of a debt, of which he holds in his possession the written evidence, without producing it, should not be regarded by the chancellor as any proof of such debt sufficient to warrant the injunction.—*Union Bank v. Poultney*, 8 G. & J. 324. [Cited and annotated in 30 L. R. A. 128, on injunction against execution sales or other proceedings under final process.]

#### § 146. Use and effect of answer.

##### Cross-Reference.

On motion to dissolve, see post, § 172.

(a) The propriety of granting a preliminary injunction is to be determined entirely from the bill and exhibits filed therewith,

without regard to the answer.—*Smith-Dixon Co. v. Stevens*, 100 Md. 110, 59 Atl. 401.

(b) Where, on an application for a preliminary injunction, the answers filed before the hearing deny the equity of the bill in such manner as would authorize the dissolution of an injunction on motion therefor, it is error to grant the injunction.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762.

(c) On an application for a preliminary injunction, answers filed before the hearing on the application must be considered.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762.

(d) On an application for a preliminary injunction, answers setting up new matter by way of avoidance will not prevent the issuing of the injunction.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762.

(e) Where the answer is not responsive to the bill, but relies entirely on new matter, which can only be established by evidence, and the status of the property or other rights involved may be changed, it is proper to grant a preliminary injunction when the allegations of the bill make a proper case for that relief.—*Riggs v. Winterode*, 100 Md. 439, 59 Atl. 762.

(f) Where a suit to enjoin a board of road commissioners from using a fund to improve certain roads to the exclusion of others, on the ground that its discretion was improperly exercised to benefit the property of two of its members, is heard on bill and answer denying the allegations of the bill, and no evidence is introduced by plaintiff, the answer is evidence for the defendants, and the preliminary injunction will be dissolved.—*Blundon v. Crosier*, 93 Md. 355, 49 Atl. 1.

(g) Where defendant asserts positively that it is not his intention to do a certain act, or to violate any particular right asserted by plaintiff, and there is no evidence to show the contrary, a temporary injunction will not be perpetuated.—*Whalen v. Dalashmutt*, 59 Md. 250.

(h) Where the answer denies the equity of the bill, the injunction will be refused.—*State v. Jarrett*, 17 Md. 309; *Lynn v. Mt. Savage Iron Co.*, 34 Md. 603.

(i) On an application for an injunction, defendant may instantly put in his answer,

so as to prevent the imposition of the threatened restriction; and the court is bound to consider it and give it proper effect if filed before the application is disposed of.—*Krone v. Krone*, 27 Md. 77.

(j) The proper filing of such an answer as would dissolve an injunction if granted will prevent one from issuing.—*Bell v. Purvis*, 15 Md. 22.

#### § 147. Counter affidavits and other evidence.

(a) To warrant a court of chancery in issuing a preliminary injunction, strong prima facie evidence of the facts on which complainant's equity rests must be presented to the court.—*Union Bank v. Poultney*, 8 G. & J. 324. [Cited and annotated, see supra, § 145.] *Laupheimer v. Rosenbaum*, 25 Md. 219.

(b) A bill in equity set forth an indebtedness to the complainant of \$2,045.12, that the debtor had property of about \$20,000 in value, that he had mortgaged the same to secure the sums of \$5,396.72, \$2,567.25, and \$3,100, and had made a sale of a part thereof to secure the sum of \$2,950, which last mortgage and sale were alleged to be fraudulent, without consideration, and made for the purpose of defrauding the complainants, and prayed that the last-mentioned mortgage and sale might be declared void, that an injunction might issue, and a receiver be appointed. No proof having been offered of the claims of the complainants except the affidavit of one of them, the mortgagee having answered, upon oath, that the consideration of the mortgage attacked as fraudulent "was true and bona fide as therein set forth," and the property of the defendant being several thousand dollars more than his liabilities as set forth by the bill. *Held*, that a decree of the lower court, granting a preliminary injunction, was erroneous and must be reversed.—*Nusbaum v. Stein*, 12 Md. 315.

#### § 148. Bond or undertaking.

##### Cross-References.

Bond on continuing or dissolving injunction, see post, § 178.

Liabilities on bonds or undertakings, see post, §§ 234-256.

In actions by receiver in bankruptcy, see "Bankruptcy," § 115.

(a) Independent of statute a court of equi-

ty may impose such terms by an injunction bond as it deems proper in its discretion.—*American Bonding Co. v. State*, 120 Md. 305, 87 Atl. 922.

(b) Despite failure to give an injunction bond required by Code 1904, art. 66, § 18, an injunction *held* properly continued in effect after a bond was given.—*Wingert v. Brewer*, 116 Md. 518, 82 Atl. 157. (See Code 1911, art. 66, § 18.)

(c) It is not requisite to the granting of an injunction that a bond be filed with the bill. Such a bond need not be filed till ordered by the court.—*Negro Charles v. Sheriff*, 12 Md. 274. [Cited and annotated in 30 L. R. A. 118, on injunction against execution sales or other proceedings under final process.]

(d) Whether a bond shall be required on the granting of injunction rests in the discretion of the court.—*White v. Davidson*, 8 Md. 169, 63 Am. Dec. 699.

(e) The mere delivery to the clerk of an injunction bond does not import its acceptance and approval by the court. If, however, the bond remains where it should be if accepted, and the parties act under it, these circumstances are evidence of its acceptance by the proper authority.—*Burgess v. Lloyd*, 7 Md. 178.

(f) An injunction to restrain proceedings at law for the collection of money due upon promissory notes given for the purchase money of land will not be granted without an injunction bond.—*Reynolds v. Howard*, 3 Md. Ch. 331.

(g) An injunction to stay proceedings at law cannot be granted until an injunction bond, with surety, is given to each of the plaintiffs at law.—*Walsh v. Smyth*, 3 Bland 9.

(h) An injunction will not be granted to restrain proceedings at law between the same parties without bond and surety by the plaintiff in equity to the plaintiff at law to prosecute the suit in equity with effect.—*Walsh v. Smyth*, 3 Bland 9.

(i) The penalty of an injunction bond should be at least double the amount of the debt and interest claimed in the proceedings enjoined.—*Billingslea v. Gilbert*, 1 Bland 566.

(j) An injunction bond to stay proceedings at law should state the term at which the judgment was obtained.—*Whitney v. Muschet*, 1 Bland 566, note.

(k) Where on injunction to stay an action at law on the money appearing to be due by the execution issued being paid to the register, injunction may issue without a bond.—*Counselman v. Gaither*, 1 Bland 566, note.

(l) Where the surety in an injunction bond is or has become insufficient as being an infant or having become insolvent, the court will order new security, or that the injunction be dissolved; and, if the court has been imposed on, no time will be allowed to give new security. Such matter may be inquired into by allowing testimony to be taken, and appointing a day for hearing.—*Onion v. McComas*, 1 Bland 566, note.

(m) Where, in a suit in equity for an injunction, the answers have come in, and they show on their face a case for a perpetual injunction, and the continuance of the injunction is not dependent upon a question of law or fact to be subsequently established, it is unnecessary to require an injunction bond.—*Alexander v. Ghiselin*, 5 Gill 188. [Cited and annotated in 30 L. R. A. 125, on injunction against execution sales or other proceedings under final process.]

(n) In general, where an injunction issues without bond, the defendants may petition for an order of court requiring bond to be given by a reasonable period, or, on default, to have the injunction dissolved.—*Alexander v. Ghiselin*, 5 Gill 188. [Cited and annotated, see supra.]

#### § 149. Deposit or payment into court.

#### § 150. Restraining order pending hearing of application.

##### Cross-Reference.

Requisites and validity, see post, § 204.

(a) Restraining orders, passed at the time of filing the bill, and before answer, should be governed by the principles applicable to preliminary injunctions, and should never go further than to suspend defendant's action until an opportunity is afforded him to answer and defend.—*L. A. Thompson Scenic Ry. Co. v. Young*, 90 Md. 278, 44 Atl. 1024.

#### § 151. Scope of inquiry and questions considered.

#### § 152. Hearing and determination.

##### Cross-References.

Dismissal of action, see ante, § 129.

Denial of due process of law, see "Constitutional Law," § 312.

(a) Upon the hearing of a motion for a preliminary injunction, the rules of evidence are applied less strictly than on the final hearing of the cause, and evidence that would not be competent in support of an application for a perpetual injunction may be admitted.—*My Maryland Lodge, No. 186, I. A. M. v. Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752. [Cited and annotated in 16 L. R. A. (N. S.) 85, 96, on legality of "secondary boycott" by labor union.]

#### §§ 153-155. (See Analysis.)

#### § 156. Order on application.

#### § 157.— In general.

(a) An order directing an injunction to issue is not to be treated as a nullity because it did not specifically define the matter upon which the writ was to operate, since the order is to be construed with reference to the prayer and object of the bill upon which it was granted.—*Hamilton v. State*, 32 Md. 348.

(b) After a sheriff had sold property on an execution and received the money therefor, an injunction was issued to stay further proceedings "until the further order of the court." Subsequently the County Court passed an order to the sheriff to pay the money over to the party who was the owner of the property. Held, that this order was erroneous, because the injunction had not been made perpetual.—*Dail v. Traverses*, 8 Gill 41. [Cited and annotated in 30 L. R. A. 141, on injunction against execution sales or other proceedings under final process.]

(c) If a party who has applied to one court for an injunction, and failed in his application, afterwards apply to another court of concurrent jurisdiction for the same purpose upon the same grounds, without disclosing his former application, relief may be extended to the other party in a summary way upon his petition.—*Wood v. Bruce*, 9 G. & J. 215.

**§ 158.— Operation and effect.****Cross-Reference.**

Successive injunctions or applications, see ante, § 8.

(a) As a general rule an injunction before final hearing does not necessarily prejudice any party, its object being to preserve the property or fund in controversy and effect ultimate justice.—*State v. Northern Cent. Ry. Co.*, 18 Md. 193. [Cited and annotated in 15 L. R. A. 84, on consolidated interstate corporation as domestic corporation of one of states; in 38 L. R. A. (N. S.) 377, on set-off, counterclaim, or recoupment in action by state.]

(b) Where a petition for leave to file a bill of review, under act 1795, c. 88, also praying an injunction, has been dismissed by the Court of Chancery, the Court of Appeals cannot grant the injunction, although the court below ought to have done so.—*Lockett v. White*, 10 G. & J. 480. (See Code 1911, art. 16, § 152.)

(c) Where an injunction was imposed in general terms, without any reference to previous judicial proceedings, from which the defendant claimed to derive his authority, it was held that the act enjoined was prohibited while the injunction remained undissolved, although a new authority was obtained by the defendant from a similar source.—*Williamson v. Carnan*, 1 G. & J. 184.

**§ 159. Objections and exceptions.**

(a) An objection that an application for a temporary injunction was not properly verified will not avail on final hearing, where the proofs justify a permanent injunction.—*Rothenburg v. Vierath*, 87 Md. 684, 40 Atl. 655.

**§ 159½. Costs.****(B) CONTINUING, MODIFYING, VACATING, OR DISSOLVING.****Cross-References.**

Perpetuation of temporary injunction, see post, § 191.

Certiorari to review or set aside, see "Certiorari," § 17.

Dissolution as incidental relief in prohibition proceedings, see "Prohibition," § 30.

Effect of appeal or other proceedings for review, see "Appeal and Error," § 447.

Effect of removal of cause from state to federal court, see "Removal of Causes," § 114.

Effect of sequestration on injunction previously issued, see "Sequestration," § 1. Effect of supersedeas or stay, see "Appeal and Error," § 488.

In suit for infringement of patent, see "Patents," § 308.

Mandamus to compel dissolution, see "Mandamus," §§ 3, 37.

Terms of court for hearing on motion to dissolve, see "Courts," § 69.

**§ 160. Right to continuance in general.****Cross-Reference.**

Continuance pending appeal from order of dissolution, see "Appeal and Error," § 458.

(a) Where an injunction is granted to preserve the property from waste until an application for a receiver can be heard, its continuance must depend on the fate of the latter application, and if the receiver is refused the injunction must be dissolved.—*Walker v. House*, 4 Md. Ch. 39.

§§ 161, 162. (See Analysis.)

**§ 163. Grounds for continuing, modifying, vacating, or dissolving.****Cross-Reference.**

Grounds for continuing injunction against landlord, see "Landlord and Tenant," § 182.

(a) A grantor of land sued in equity to set aside the deed on the ground of fraud, etc., and was defeated. Subsequently he sued to enjoin the grantees from trespassing on the property alleged to be in his possession, but the bill disclosed nothing as to the conveyance or prior suit. Held, that the injunction order was properly rescinded on the facts as to the conveyance, etc., coming to the knowledge of the court.—*Tifel v. Jenkins*, 95 Md. 665, 53 Atl. 429.

(b) The absence of negligence of complainant's solicitor, on the hearing of a motion to dissolve an injunction, furnishes no ground against the dissolution.—*Heck v. Vollmer*, 29 Md. 507.

(c) An injunction will be dissolved where it does not appear that the act enjoined will inflict important or irreparable injury, such as could not be fully compensated by an action at law.—*Cherry v. Stein*, 11 Md. 21.

(d) A plea of limitations set up in an answer is not sufficient ground for dissolving the injunction.—*Hutchins v. Hope*, 12 G. & J. 244; *White v. Flannigan*, 1 Md. 525, 54 Am. Dec. 668. [Cited and annotated in

7 L. R. A. (N. S.) 75, 78, on injunctive relief as to fences or gates.]

(e) An injunction to restrain a trespass will be dissolved on the coming in of the answer denying the right of the complainant, unless it appears that there is a suit at law pending to try the title of the parties.—*Stewart v. Chew*, 3 Bland 440.

(f) An injunction will be dissolved where the bill on which it was granted contained no prayer therefor.—*Brannock v. Moll*, 2 Bland 106, note.

(g) Where a case stood on motion to dissolve the injunction, the suggestion that, independent of the main question, it ought to be immediately dissolved on account of the bond not covering the judgment by supersedeas, was refused, as in case of a deficiency in the bond the practice should be to require further security.—*Williams v. Hall*, 1 Bland 193, note.

(h) Where the answer admits that there remains a dispute between the parties, the injunction will be continued until the final hearing.—*Chase v. Manhardt*, 1 Bland 333. [Cited and annotated in 30 L. R. A. 790, on injunction against judgments obtained by fraud, accident, mistake, surprise, and duress.]

(i) In an injunction case, if the plaintiff dies, his representatives will be ordered to revive the suit by a certain day or the injunction will be dissolved.—*Griffith v. Bronaugh*, 1 Bland 547.

(j) If an injunction bond is insufficient, plaintiff may be ruled to show cause why he should not give better security or the injunction may be dissolved.—*Yance v. Short*, 1 Bland 566, note; *Sweeny v. Rodgers*, 1 Bland 566, note.

(k) Where an injunction issues to restrain proceedings at law on the ground of credits not allowed, and the defendant admits the credits in his answer and consents to allow them, the injunction should be dissolved as to the balance due.—*Welch v. Parran*, 2 Gill 320. [Cited and annotated in 37 L. R. A. (N. S.) 1205, on right of one advancing purchase price to subrogation to vendor's lien.]

(l) Where the facts stated in the bill for an injunction give rise to no equity, the injunction will be dissolved, whether the defendant has answered or not, or however imperfectly

he has answered.—*Chesapeake & O. Canal Co. v. Baltimore & O. R. Co.*, 4 G. & J. 1.

(m) Where a proper ground for an injunction is admitted by the answer, and there still remains a dispute between the parties, the injunction will be continued until final hearing or further order.—*Lynch v. Colgate*, 2 H. & J. 34.

#### § 164. Authority of court or judge.

##### Cross-References.

Jurisdiction of federal court in cause removed from state court, see "Removal of Causes," § 114.

Original jurisdiction of appellate courts, see "Courts," § 206.

#### § 165. Persons entitled to move.

(a) While a party is in contempt for disobedience to an injunction, he cannot properly have a hearing on a motion for its dissolution; but, where the nature and extent of the punishment to be inflicted for such contempt depend on the determination of the question whether the injunction shall be continued, the hearing may be allowed.—*Williamson v. Carnan*, 1 G. & J. 184.

#### §§ 166, 167. (See Analysis.)

#### § 168. Motion to dissolve or vacate.

##### § 169.—In general.

(a) Where the order for injunction was passed on the filing of the bill, and afterwards the defendant answered, if he considered the averments of the bill untrue, he should have moved to dissolve the injunction instead of appealing from the order granting it.—*Frostburg Bldg. Ass'n v. Stark*, 47 Md. 338.

##### § 170.—Notice.

(a) Where an injunction has been granted against proceedings at law, and such proceedings are abated by the death of the plaintiff therein, a dissolution of the injunction can only be obtained on notice to the representatives of the deceased, or, if they are nonresidents or unknown, by notice entered on the docket.—*Walsh v. Smyth*, 3 Bland 9.

(b) Where a party, who had applied to one court for an injunction and failed in his application, afterwards applied to another court of concurrent jurisdiction for the same purpose, but the equities of the two applica-

tions were different, the temporary injunction should not be dissolved without answer of the defendant, or at least without notice to the complainant.—*Wood v. Bruce*, 9 G. & J. 215.

§ 171.—On bill or original papers.

§ 172.—On answer.

(a) Where the bill in a suit to enjoin a city from constructing drains showed that the city proposed to make the gutters so deep that trees were injured or destroyed, all of which was practically admitted in the answer, defendant could not, without amending the answer, have the injunction dissolved on a showing that the deepening of the gutters was a part of a general scheme to grade the street, and hence was authorized.—*City of Easton v. Turner*, 117 Md. 111, 83 Atl. 42.

(b) Every allegation on which plaintiff relied for injunction being denied by the answer, the injunction is properly dissolved on motion in the absence of evidence to support the averments of the petition.—*McCormick v. McCormick*, 104 Md. 325, 65 Atl. 54.

(c) In a suit for an injunction to restrain a boycott of plaintiff's business, affidavits, on a petition for an injunction pending the cause, which showed a loss of business from a boycott, and the circulation of boycott literature, justified a continuance of the injunction until final hearing, notwithstanding denials of the answer.—*My Maryland Lodge, No. 186, I. A. M. v. Adt*, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752. [Cited and annotated in 16 L. R. A. (N. S.) 85, 96, on legality of "secondary boycott" by labor union.]

(d) Where a motion to dissolve an injunction is heard on a bill and answer, and the latter denies all the facts stated in the bill, the injunction will be dissolved, since the allegations of the answer which are responsive to the bill will be regarded as true.—*Wenzel v. Milbury*, 93 Md. 427, 49 Atl. 618.

(e) Where the answer denies the equity of the bill, the general rule is that the injunction will be dissolved.—*Salmon v. Clagett*, 3 Bland 125; *Stewart v. Chew*, Id. 440; *Hutchins v. Hope*, 12 G. & J. 244; *Washington University v. Green*, 1 Md. Ch. 97. [Cited and annotated in 20 L. R. A. 169, on power to grant mandatory injunctions.] *Harris v. Sangston*, 4 Md. Ch. 394; *Wood v. Pat-*

*terson*, 4 Md. Ch. 335. [Cited and annotated in 5 L. R. A. (N. S.) 799, on effect of ignorance or carelessness of person overreached on right to equitable relief; in 28 L. R. A. (N. S.) 854, 883, on relief from mistake of law as to effect of instrument.] *Furlong v. Edwards*, 3 Md. 99; *Dorsey v. Hagerstown Bank*, 17 Md. 408; *Hyde v. Ellery*, 18 Md. 496; *Hubbard v. Mobray*, 20 Md. 165. [Cited and annotated in 39 L. R. A. (N. S.) 85, on right to preliminary injunction having effect of transferring possession of property.] *Voshell v. Hynson*, 26 Md. 83; *Webster v. Hardisty*, 28 Md. 592. [Cited and annotated in 30 L. R. A. 787, on injunction against judgments obtained by fraud, accident, mistake, surprise, and duress; in 31 L. R. A. 38, on negligence as cause for, and as bar to, injunctions against judgments.] *Johnson Co. v. Henderson*, 83 Md. 125, 34 Atl. 835.

(f) An answer that respondent "does not believe and denies" the material averment of the bill for an injunction is an express denial thereof, and the injunction should be dissolved in case of the complainant's failure to support the averment in the bill by proof.—*Philadelphia Trust, Safe-Deposit & Ins. Co. v. Scott*, 45 Md. 451.

(g) The rule that all defendants must answer before an injunction can be dissolved does not apply where the injunction was continued by the decree.—*City of Annapolis v. Harwood*, 32 Md. 471. [Cited and annotated in 23 L. R. A. 341, 40 L. R. A. (N. S.) 25, 26, 31, 32, on conclusiveness of enrolled bill.]

(h) An order continuing injunction will not be reversed because one of the defendants, who was a nominal party only and agent of the other defendant, had failed to answer the bill.—*City of Annapolis v. Harwood*, 32 Md. 471. [Cited and annotated, see supra.]

(i) Where all or any particular number of the defendants in injunction proceedings are implicated in the same charge, and that charge forms the material ground for sustaining the injunction, the answers of all or as many as may be implicated should be required before dissolving the injunction.—*Heck v. Vollmer*, 29 Md. 507.

(j) Where the defendants against whom the gravamen of the charge rests have fully answered, the injunction may be dissolved, though the other defendants have not answered.—*Heck v. Vollmer*, 29 Md. 507.



(k) On motion to dissolve an injunction, a responsive answer must be taken as true.—*Calvin v. Warford*, 17 Md. 433; *Webster v. Hardisty*, 28 Md. 592. [Cited and annotated, see supra.]

(l) Where an answer to a bill for an injunction fails to meet a material allegation thereof, the injunction will not be dissolved.—*Brown v. Stewart*, 1 Md. Ch. 87; *Sisk v. Garey*, 27 Md. 401.

(m) New matter set up in the answer by way of avoidance will not warrant dissolution of the injunction.—*Chesapeake & O. Canal Co. v. Baltimore & O. R. Co.*, 4 G. & J. 1; *Hardy v. Summers*, 10 G. & J. 316, 32 Am. Dec. 167; *Hutchins v. Hope*, 12 G. & J. 244; *Salmon v. Clagett*, 3 Bland 125; *In re Bellona Co.*, 3 Bland 442; *Drury v. Roberts*, 2 Md. Ch. 157; *State v. Northern Cent. Ry. Co.*, 18 Md. 193.

(n) An answer under oath is evidence for the respondent at the hearing of a motion to dissolve an injunction, though the bill did not call for a sworn answer.—*Gelston v. Rullman*, 15 Md. 260.

(o) A motion to dissolve an injunction, and exceptions to the answer, may be taken up together and determined at the same time.—*Salmon v. Clagett*, 3 Bland 125; *Keighler v. Savage Mfg. Co.*, 12 Md. 383, 71 Am. Dec. 600. [Cited and annotated in 30 L. R. A. 239, on injunction against judgments by confession; in 13 L. R. A. (N. S.) 580, on relief from judgment suffered in reliance on unkept promise.]

(p) An injunction is not to be dissolved on the coming in of an answer which does not deny the equity of the bill.—*Hutchins v. Hope*, 12 G. & J. 244; *Hamilton v. Whitridge*, 11 Md. 128, 69 Am. Dec. 184. [Cited and annotated in 3 L. R. A. (N. S.) 623, on injunction against crime involving property right; in 11 L. R. A. (N. S.) 1061, on neighbor's right to enjoin bawdy house.]

(q) An injunction granted on bill, answer, and evidence, taken by commission, will not be dissolved if the bill shows sufficient equity, not denied by the answer, to support the injunction.—*Hamilton v. Whitridge*, 11 Md. 128, 69 Am. Dec. 184. [Cited and annotated, see supra.]

(r) An injunction was granted on an averment in a bill that defendant offered to com-

promise a balance appearing to be due complainant by certain accounts rendered, by the payment of a certain sum, and that, in addition to these accounts, there was an error of \$1,000. The answer denied this allegation by averring that defendant's offer was made without any reference to the stated balance, but in reference to the details and items of the account, and to the grounds of the defendant's claims against complainant. Held, that the equity of the bill was sworn away and the injunction must be dissolved.—*Wood v. Patterson*, 4 Md. Ch. 335. [Cited and annotated, see supra.]

(s) On motion to dissolve an injunction, the allegations of the bill not denied by the answer are to be taken as true.—*Alexander v. Ghiselin*, 5 Gill 138. [Cited and annotated in 30 L. R. A. 125, on injunction against execution sales or other proceedings under final process.] *Brown v. Stewart*, 1 Md. Ch. 87; *Washington University v. Green*, 1 Md. Ch. 97. [Cited and annotated, see supra.] *Briesch v. McCauley*, 7 Gill 189. [Cited and annotated in 30 L. R. A. 787, on injunction against judgments obtained by fraud, accident, mistake, surprise, and duress; in 31 L. R. A. 765, on injunction against judgments for defenses existing prior to rendition; in 32 L. R. A. 324, on equitable jurisdiction as to injunctions against judgments.] *Cronise v. Clark*, 4 Md. Ch. 403.

(t) An answer which does not deny the equity of the bill, but states "that respondent does not believe and cannot admit that the said attorney made any such arrangement or contract as set forth in the bill," is insufficient to dissolve an injunction.—*Kent v. Ricards*, 3 Md. Ch. 392. [Cited and annotated in 21 L. R. A. 850, on affect of judgment on authorized appearance; in 30 L. R. A. 789, on injunction against judgments obtained by fraud, accident, mistake, surprise, and duress.]

(u) The answer must positively deny the material facts of the bill, and the denial must be grounded on personal knowledge, not merely on information and belief, in order to support an application to dissolve a special injunction.—*Doub v. Barnes*, 4 Gill 1; *Same v. Same*, 1 Md. Ch. 127.

(v) The general rule is that an injunction properly granted will not be dissolved till all the defendants have answered.—*Jones v. Magill*, 1 Bland 177; *In re Cape Sable Co.*, 3 Bland 606. [Cited and annotated in 31 L.

R. A. (N. S.) 472, on dissolution of partnership by formation of corporation; in 30 L. R. A. 240, on injunction against judgments by confession; in 27 L. R. A. 455, as to when realty considered firm property.]

(w) Although the allegations of an answer should be positive, yet an answer by an executor or administrator to dissolve an injunction, stating facts "as he is informed and verily believes," is sufficient.—*Coale v. Chase*, 1 Bland 136.

(x) An injunction may be dissolved, though only part of the defendants have answered, unless the plaintiff has taken the requisite steps to compel an answer from all.—*Jones v. Magill*, 1 Bland 177.

(y) Though defendants would be entitled to move for dissolution of an injunction without answering, yet, where they have filed an answer, they are entitled to the benefit thereof on such motion.—*McMechen v. Story*, 1 Bland 183.

(z) Where the answer to a bill on which an injunction has been granted does not fully meet the merits thereof, the injunction will be continued.—*Paul v. Nixon*, 1 Bland 200, note; *Stewart v. Barry*, Id. 193.

(aa) On a motion to dissolve an injunction, the facts stated in the answer are alone to be taken as true, and not the arguments and inferences drawn and made by the defendant on and from these facts.—*Chase v. Manhardt*, 1 Bland 333. [Cited and annotated in 30 L. R. A. 790, on injunction against judgments obtained by fraud, accident, mistake, surprise, and duress; in 40 L. R. A. (N. S.) 589, 600, on acceptance of principal as affecting right to interest.]

(bb) On the hearing of a motion to dissolve an injunction, objections of every kind to the answer may be made, and are then in order.—*Gibson v. Tilton*, 1 Bland 352, 17 Am. Dec. 306.

(cc) A suit at law was brought in favor of B. and A., against C. on a draft. C. filed a bill of discovery against B. and A. to discover whether they ever were the owners of said draft, or paid any money for it, and obtained an injunction to stay proceedings in the suit at law on the draft. The answer by A., B. being dead, disclosed all the facts within the knowledge of A., and left the legal consequences of these facts to the

court. *Held*, that A. had answered fairly and properly, and that the answer was sufficient to entitle A. to a dissolution of the injunction.—*Adams v. Whiteford*, 9 Gill 501.

(dd) Allegations in the answer to a bill for injunction, not responsive to the bill, without proof, do not affect the injunction.—*Hutchins v. Hope*, 7 Gill 119.

(ee) Where the answer to a bill for injunction set up a definite fact by way of avoidance, such answer alone was not sufficient to establish it, but on motion to dissolve the injunction, on the answer such fact must be made out by proof.—*Hutchins v. Hope*, 12 G. & J. 244.

### § 173.—Affidavits in support of action.

(a) A motion to dissolve an injunction cannot be sustained merely on affidavits, when the answer does not sufficiently deny the equity of the bill.—*Bouldin v. City of Baltimore*, 15 Md. 18.

(b) Though ex parte affidavits cannot be received in support of a continuance of the injunction, yet where depositions were taken under an order of the County Court, to be used on the hearing of a motion, and the case was removed to the Chancery Court, such depositions will be treated as sanctioned by the order of the court, where they were ordered and will be received in evidence.—*In re Bellona Co.*, 3 Bland 442.

(c) On motion to dissolve an injunction, ex parte affidavits to establish the complaint cannot be read.—*In re Bellona Co.*, 3 Bland 442.

### § 174.—Opposing and rebutting affidavits and other evidence.

*Cross-Reference.*

False testimony, see "Perjury," § 12.

(a) On a motion to dissolve an injunction, the testimony of one witness is not sufficient to overcome the effect of a sworn answer.—*Gelston v. Rullman*, 15 Md. 260.

### § 175.—Hearing and determination.

(a) After answer by defendant, a temporary injunction may be dissolved, though counsel for complainant was not in court, since the defendant would have been entitled to a dissolution on the answers alone, if sufficient.—*Tong v. Oliver*, 1 Bland 198, note (k).

(b) On motion to dissolve an injunction, a chancellor confines himself exclusively to a consideration of the facts set forth in the bill out of which the equity of complainant arose, and to the answer of defendants to those facts.—*Chesapeake & O. Canal Co. v. Baltimore & O. R. Co.*, 4 G. & J. 1.

(c) Where a doubt is entertained as to the propriety of granting an injunction, or where, when granted, it operates in restraint of public commissioners for the opening of a road or the like, or stops or embarrasses the operation of a large manufacturing establishment, or restrains a public ferry, and in other cases of a peculiar character, the court will appoint a very early day for hearing the motion for dissolution of the temporary injunction, and that, too, with or without answer; but where the injunction, by the defendant's own showing, operates in restraint of a right recently acquired, or not long decidedly and exclusively enjoyed, and there is nothing peculiar in the case, it must, as in other cases where individuals only are restrained, take the course of the court.—*Williamson v. Carnan*, 1 G. & J. 184.

#### § 176.—Order.

##### Cross-References.

Dismissal of action, see ante, § 129.

Conclusiveness of order on motion, see "Judgment," § 569.

Continuance pending appeal from order, see "Appeal and Error," §§ 458, 488.

(a) On denial of a motion to dissolve a preliminary injunction, the court will not render a final decree, but will merely continue the injunction till final hearing.—*Wilmer v. Picka*, 118 Md. 543, 85 Atl. 778.

(b) Where a cause has been heard on motion to dissolve an injunction, and not on final hearing, it is error for the court to proceed to pass a final decree.—*Huston v. Ditto*, 20 Md. 305. [Cited and annotated in 31 L. R. A. 772, on injunction against judgments for defenses existing prior to rendition; in 32 L. R. A. 324, 326, on equitable jurisdiction as to injunctions against judgments.]

(c) A bill was filed to set aside a contract of dissolution of a partnership on the ground of fraud. Held, that, on a motion to dissolve a temporary injunction granted, the court could not decide that the contract of disso-

lution was void.—*O'Bryan v. Gibbons*, 2 Md. Ch. 9.

#### § 177. Motion to modify.

#### § 178. Continuance, dissolution, or discharge on security.

##### Cross-Reference.

Liabilities on bonds or undertakings, see post, §§ 234-256.

#### § 179. Dissolution by causes subsequent to grant of injunction.

##### Cross-Reference.

Dissolution of injunction against waste by tenant in dower, see "Dower," § 114.

#### § 180.—Proceedings in action.

#### § 181.—Dismissal or other termination of action.

(a) Though the amended bill be considered not as the entire complaint of plaintiff, but as an amendment only, which, with the original bill, formed the basis of her action, the decree dismissing her bill discontinued the injunction, since amendments are always considered as forming a part of the original bill.—*Wagoner v. Wagoner*, 77 Md. 189, 26 Atl. 284. [Cited and annotated in 38 L. R. A. (N. S.) 963, on power, in absence of statute, to decree alimony or maintenance, independently of proceedings for divorce.]

(b) A formal order is not necessary to dissolve an injunction restraining the defendant in a suit in equity from selling or transferring the property in dispute, when there is a final decree which disposes of the whole controversy by granting the relief prayed in the bill.—*Musgrave v. Staylor*, 36 Md. 123. [Cited and annotated in 34 L. R. A. 333, on conclusiveness of prior decisions on subsequent appeals.]

#### § 182.—Death of party.

(a) An injunction against proceedings at law is not dissolved by the abatement of such proceedings by the death of the plaintiff.—*Walsh v. Smyth*, 3 Bland 9.

#### § 183. Reinstatement.

(a) On a motion to dissolve an injunction, where the court is called on for its judgment, and the order of dissolution is passed after the proceedings are read and fully considered, a party is not entitled to have the order rescinded and the injunction reinstated.—*Heck v. Vollmer*, 29 Md. 507.

(b) An injunction having been dissolved by consent of complainant, but with a special

saving of his equity to move for its renewal, his motion to reinstate it is equivalent to an application after bill and answer filed, and places the parties in the same attitude as to facts to be considered as on a motion to dissolve on the coming in of an answer.—*State v. Northern Cent. Ry. Co.*, 18 Md. 193.

(c) If the dissolution of an injunction be improperly obtained, it will be revived.—*Billingslea v. Gilbert*, 1 Bland 566.

#### § 184. Effect of dissolution or discharge.

(a) An application for an injunction, founded on a defect in a writ issued by a court of law, though granted and afterwards dissolved on answer will not prevent the party obtaining it from moving to quash the writ at its return; such motion being exclusively cognizable in the court of law.—*Waters v. Duvall*, 6 G. & J. 76.

#### §§ 185-187. Damages on dissolution.

##### Cross-References.

Damages in actions on injunction bonds, see post, § 252.

Liabilities on bonds or undertakings, see post, §§ 234-256.

In suit for infringement of copyright, see "Copyrights," § 85.

In suit for injunction against enforcement of judgment, see "Judgment," § 459.

Of injunction against execution, see "Execution," § 172.

##### Assessment.

Damages for wrongful injunction, see post, §§ 257-261.

Enforcement of bond, see post, § 241.

Right to jury trial on issue of damages, see "Jury," § 13.

#### § 188. Costs on dissolution.

### V. PERMANENT INJUNCTION AND OTHER RELIEF.

##### Cross-References.

In suit by owner of property taken for public use, see "Eminent Domain," § 306.

In suit for infringement of copyright, see "Copyrights," § 86.

In suit for infringement of patents, see "Patents," § 317.

In suit for infringement of trade-mark or trade-name or for unfair competition, see "Trade-Marks and Trade-Names," § 97.

#### § 189. Nature and scope of relief.

##### Cross-Reference.

Confession of judgment as condition of restraining action at law, see ante, § 26.

(a) Where there is a dispute as to title to

property, and a court of equity takes jurisdiction to restrain trespass, it can try the question of title, or it may frame an issue either of ejectment or quare clausum fregit and send such issue to a court of law to be tried, or it may so frame its order granting its injunction as to compel the parties themselves to institute such an action.—*Baltimore & O. R. Co. v. Silbereisen*, 121 Md. 407, 88 Atl. 252, 89 Atl. 102.

#### § 190. Permanent injunction in general.

##### Cross-Reference.

Grant of permanent injunction on application for preliminary injunction, see ante, § 157.

(a) When an injunction is sought restraining the commission of a trespass, if there is a real dispute as to the title to the premises, the parties will be remitted to their action at law to determine that question, the court meanwhile granting, in a proper case, a temporary injunction. In such a case, where the court below tried the whole question, and granted a perpetual injunction, *held*, that the decree should be reversed, and a temporary injunction granted; the plaintiff being required to bring an action at law, and the temporary injunction to be thereafter made perpetual or dissolved according to the result of that action.—*Clayton v. Shoemaker*, 67 Md. 216, 9 Atl. 635.

#### § 191. Perpetuation of temporary injunction.

##### Cross-Reference.

Conclusiveness of decision in proceedings for preliminary injunction, see ante, § 158.

(a) An injunction to stay waste pending an action at law may be made perpetual after a judgment at law in favor of plaintiff, or may be modified to correspond to the extent of his recovery; but where the answer to the supplemental bill, praying that the injunction be made perpetual, alleges merely that the verdict at law "has not ascertained the claim of plaintiff to be as extensive as in his bill he has supposed," and the case is submitted on bill and answer, the injunction granted will be made perpetual.—*Hill v. Bowie*, 1 Bland 593. [Cited and annotated in 38 L. R. A. (N. S.) 230, on jurisdiction of equity when the only relief sought is an

injunction or receiver to preserve status quo, pending action or proceedings before other tribunal.]

§§ 192-196. (See Analysis.)

§ 197. Recovery of damages in addition to injunction.

*Cross-References.*

Enforcement in injunction suit of liability on bond, see post, § 241.

Joinder of causes for injunction and damages, see "Action," § 40.

(a) Courts of equity will, under special circumstances, consider and settle the question of damages, as incident to injunctive relief.—*Reese v. Wright*, 98 Md. 272, 56 Atl. 976.

(b) Where a turnpike company granted an electric railway company the right to operate its road over the turnpike for the transportation of passengers only, and not for freight, the running of an express car over the road, not being under contract, was a mere trespass, for which the turnpike could not be compensated in proceedings in equity to enjoin such use of the road.—*President, etc., of Baltimore & F. Turnpike Road v. United Railways & Electric Co.*, 98 Md. 188, 48 Atl. 723.

§ 198. Assessment of damages.

§ 199. Relief to defendant.

(a) After an injunction was dissolved, defendant filed a petition stating that complainants, in pursuance of the injunction, had taken possession of property to which defendant yielded, and praying that an order might be passed restoring the possession to the defendant. *Held*, that, if the defendant had surrendered possession previously held by him, he had done that which the court by its injunction did not command him to do, and he had no right to ask redress at its hands, and that the petition should be dismissed.—*Washington University v. Green*, 1 Md. Ch. 97. [Cited and annotated in 20 L. R. A. 169, on power to grant mandatory injunctions.]

(b) Where a party applying for an injunction against a suit at law admits that he owes a balance to the person to be enjoined, the court may require such balance to be brought into court to be paid accordingly.—

*Flickinger v. Hull*, 5 Gill 60. [Cited and annotated in 31 L. R. A. 66, on enjoining judgments against or in favor of sureties.]

§ 200. Costs and fees.

VI. WRIT, ORDER, OR DECREE, SERVICE, AND ENFORCEMENT.

*Cross-References.*

Restraining orders, see ante, § 150.

Temporary injunction, see ante, §§ 157, 158.

Prohibiting enforcement, see "Prohibition," § 5.

§ 201. Nature of writ or mandate.

§§ 202-206. Writ or order.

(a) A case was referred to an arbitrator by consent, under rule of the court in which the suit was pending. While the matter was still before the arbitrator, defendant obtained an injunction restraining plaintiff from proceeding with the reference, and, from the order granting an injunction, an appeal was taken. *Held*, that the arbitrator was not prevented by the pendency of the injunction case from proceeding with his award.—*Northern Cent. Ry. Co. v. Canton Co.*, 24 Md. 500. [Cited and annotated in 1 L. R. A. (N. S.) 556, on effect of appeal on injunction.]

(b) The fact that a bill for injunction was not filed until after the injunction was ordered is at most an irregularity, and not fatal to the validity of the writ.—*Davis v. Reed*, 14 Md. 152. [Cited and annotated in 22 L. R. A. 235, on injunction against trespass to cut timber.]

§§ 207-212. Final judgment or decree.

*Cross-Reference.*

In proceedings against state officers, see "States," § 212.

(a) In an action by a wife against her husband for separate maintenance out of certain real estate, and for an injunction restraining defendant from collecting the rents or interfering with the property, an injunction was ordered on the filing of the bill. Pending a motion to dissolve the injunction on answer, plaintiff filed as an amendment an entirely new bill, containing substantially the same averments and asking for the same relief as the original bill, whereupon the court passed an order refusing the injunction prayed for by the amended bill. At the final hearing it was decreed that the order

"refusing the injunction prayed for by the amended bill \* \* \* be, and the same is hereby, made perpetual," and, that the "bill of complaint is hereby dismissed." *Held*, that such decree was a refusal to continue the injunction previously granted, and it was no longer in force.—*Wagoner v. Wagoner*, 77 Md. 189, 26 Atl. 284.

(b) On a bill by the "old board" of school commissioners for an injunction to restrain the county commissioners from paying to any person other than complainant's treasurer the money payable to the board of county school commissioners, act 1886, c. 441 (Code 1888, art. 16, § 177), providing that the court may, at any stage of a cause, order the issue of a mandate or injunction directing any party to such cause, or any party properly brought before it under the existing practice, to abstain from doing any act or acts named in such mandate or injunction, authorizes a decree enjoining "the county commissioners from refusing to pay to the treasurer" of the old board money which may be payable to the "board of school commissioners."—*Washington County Com'rs v. Washington County School Com'rs*, 77 Md. 288, 26 Atl. 115. (See Code 1911, art. 16, § 199.) [Cited and annotated in 20 L. R. A. 167, on power to grant mandatory injunctions.]

(c) Where the purpose of an injunction was to prevent a disposition of property which would defeat or embarrass the passage of a final decree, until complainant's right should be effectually secured, an objection to the final decree, on the ground that it did not dissolve the injunction previously granted, was untenable, since, the injunction having served its purpose, no order of dissolution was necessary.—*Musgrave v. Staylor*, 36 Md. 123.

§§ 213-215. (See Analysis.)

## VII. VIOLATION AND PUNISHMENT.

### Cross-References.

During pendency of appeal with superseas from order dissolving injunction, see "Appeal and Error," § 492.

Injunction against infringement of copyright, see "Copyrights," §§ 85, 86.

Injunction against infringement of patent, see "Patents," § 326.

Injunction against liquor nuisance, see "Intoxicating Liquors," § 279.

Injunction against nuisance, see "Nuisance," § 86.

Malicious prosecution for contempt, see "Malicious Prosecution," § 25.

Proceedings for punishment as contempt in general, see "Contempt," §§ 80-69.

### § 216. Nature and elements of violation.

### § 217. Writ or mandate violated.

### § 218.— In general.

(a) Where a bill by county commissioners prayed for a preliminary injunction to restrain a gas company from excavating in a highway for the purpose of laying its pipes until it had obtained a permit from complainants, and an injunction issued as prayed, restraining defendant from laying its pipes until it had obtained permission from the commissioners, "or until the further order of the court," defendant, on obtaining the permit, might proceed with its work without being in contempt, though no further order of the court was made.—*Consolidated Gas Co. v. Baltimore County Com'rs*, 98 Md. 689, 57 Atl. 29.

### § 219.— Validity and regularity.

### § 220.— Pendency of stay or proceedings for review.

### Cross-References.

See "Appeal and Error," §§ 447, 458, 460, 488, 492; "New Trial," § 12.

(a) An order dissolving an injunction is stayed, leaving the injunction in full force, where an appeal is taken and an appeal bond filed.—*Hamilton v. State*, 32 Md. 348.

(b) The operation of an injunction is stayed, pending appeal, where a bond is filed.—*Gelston v. Sigmund*, 27 Md. 345. [Cited and annotated in 1 L. R. A. (N. S.) 556, on effect of appeal on injunction.]

(c) A case was referred to an arbitrator by consent, under the rule of court in which the case was pending. While the matter was still before the arbitrator, defendant obtained an injunction restraining plaintiff from proceeding with the reference. The latter filed an answer and took an appeal from the order granting the injunction, and gave bond as required by law. The arbitrator having filed his award during the pendency of the appeal, on exceptions to it

for that cause, *held*, that by the proper construction of Code 1860, art. 5, § 23, upon appeal taken, and the giving an appeal bond, the operation and effect of the injunction entirely ceased until judgment should be pronounced by the appellate tribunal.—*North-ern Cent. R. Co. v. Canton Co.*, 24 Md. 500. (See Code 1911, art. 5, § 29.) [*Cited and annotated* in 1 L. R. A. (N. S.) 556, on effect of appeal on injunction.]

(d) A bond taken by a Chancery Court on appeal from an order dissolving an injunction, though taken without statutory authority, stays operations on such order.—*Fullerton v. Miller*, 22 Md. 1. (See Code, art. 5, § 29.)

(e) The taking of an appeal from an order in chancery enjoining the closing of a road took it out of the chancellor's jurisdiction to make a subsequent order directing the defendant to remove an obstruction afterwards placed in the land, and therefore a disobedience of that order was not a contempt.—*Williamson v. Carnan*, 1 G. & J. 184.

#### § 221. Knowledge or notice.

#### § 222. Ability to obey.

#### § 223. Acts or conduct constituting violation.

(a) Upon a bill filed in the Court of Chancery an injunction was granted, restraining the defendant A. from giving, and the defendants B. and wife from receiving from said A., a preference over his other creditors. *Held*, that proceedings subsequently instituted by B. and wife in the County Court as a court of equity, and a decree thereby obtained, giving them such preference, were violations of said injunction, and that the former court had a right to prohibit by injunction the execution of such decree, and to treat the same, with the proceedings by which it was obtained, as a nullity.—*Winn v. Albert*, 2 Md. Ch. 42. Affirmed in *Albert v. Winn*, 7 Gill 446.

(b) Where the proprietors of a canal were enjoined from obstructing the use of the towing path, which the public had a right to use as such, it was *held* that obstructions by the defendants to the use of the path for other purposes were not a breach of the injunction, though they had no legal right to

make them.—*Bosley v. Susquehanna Canal*, 3 Bland 63.

#### §§ 224-228. (See Analysis.)

#### § 229. Power to punish.

(a) Where, after appeal from an order of injunction against the obstruction of a road, a further appeal was taken from the subsequent order holding the defendant in contempt, the latter appeal did not suspend the authority of the chancellor to punish disobedience of the injunction.—*Williamson v. Carnan*, 1 G. & J. 184.

#### § 230. Proceedings.

##### *Cross-Reference.*

Right to jury trial, see "Jury," § 13.

(a) To obtain an attachment for violation of an injunction, the party aggrieved must, by partition state particularly the nature and extent of the breaches of the injunction of which he complains and the person by whom they have been committed.—*In re Murdock*, 2 Bland 461, 20 Am. Dec. 381. [*Cited and annotated* in 47 L. R. A. (N. S.) 1155, on mandatory injunction to restore status existing prior to violation of prohibitory injunction; in 7 L. R. A. (N. S.) 70, on injunctive relief as to fences or gates.]

#### § 231. Review.

##### *Cross-References.*

See "Appeal and Error," § 100.

By United States Circuit Court of Appeals, see "Courts," § 405.

Habeas corpus to review proceedings, scope of inquiry, see "Habeas Corpus," § 92.

#### § 232. Punishment.

(a) Pragmatic trespassers, pending an injunction, may be compelled to remove all erections made by them in breach of the injunction at their own cost.—*In re Murdock*, 2 Bland, 461, 20 Am. Dec. 381. [*Cited and annotated*, see *supra*, § 230.]

#### § 233. Costs.

### VIII. LIABILITIES ON BONDS OR UNDERTAKINGS.

##### *Cross-References.*

Commitment for contempt for failure of bondsmen to pay, see "Contempt," § 24.

Disability of attorney to become surety, see "Attorney and Client," § 17.

In proceedings to restrain execution, see "Execution," § 177.

**§§ 234-236. Accrual or release of liability by breach or fulfillment of conditions.**

(a) Where an injunction bond expressly provided that the sureties should pay costs incurred by defendant in the injunction case if complainants failed in prosecuting their injunction with effect, the fact that the decree in the injunction case—the injunction having been dissolved—awarded costs to the defendant therein, did not defeat his right of action as against the principal and sureties on the bond.—*Jones v. State*, 101 Md. 510, 61 Atl. 222; *Jones v. Jones*, Id.

(b) A surety in an injunction bond reciting that the injunction was ordered to be issued "on the plaintiff's filing with the clerk of the court a bond executed by himself, and a surety or sureties to be approved by the court," cannot, in an action on the bond, object to its admissibility in evidence on the ground that it does not appear that the order for the injunction required bond to be given, since he is estopped by the recitals of the bond.—*Hamilton v. State*, 82 Md. 348. .

(c) The filing of an injunction bond, and consequent issue of the writ on the same day, are regarded as concurrent acts; and a recital in the bond that the obligors "have obtained" such writ, in action on the bond, will be interpreted in the present tense, and held to refer to the writ actually issued.—*Wallis v. Dilley*, 7 Md. 237. [Cited and annotated in 16 L. R. A. (N. S.) 51, 66, on recovery on injunction bond of attorney's fees necessarily expended in dissolving injunction.]

**§ 237. Rights and remedies of sureties.**

**§ 238. Discharge of sureties.**

(a) The obligation of a defendant, surety on an injunction bond on which suit is brought, is not discharged by the admission of other parties as complainants to prosecute the cause in which the injunction was issued; the bill for injunction being at the same time a creditor's bill.—*Levy v. Taylor*, 24 Md. 282. [Cited and annotated in 55 L. R. A. 390, on penalty as limit of liability on statutory bond.]

(b) In construing an injunction bond upon which suit is brought, the bill for injunction being at the same time a creditors' bill, with reference to the question of the dis-

charge of the obligation of the surety, the court will be guided by the intention of the parties when the bond was executed, taking into consideration that the bill was filed by creditors in behalf of themselves and others who might come in, and that the bond was given in a judicial proceeding as a necessary step to obtain the writ of injunction and to indemnify the adverse party against its effects and operation.—*Levy v. Taylor*, 24 Md. 282. [Cited and annotated, see supra.]

**§ 239. Extent of liability.**

*Cross-Reference.*

Damages on dissolution of injunction, see ante, §§ 186, 187.

**§ 240. Exclusiveness of remedy on bond.**

**§ 241. Enforcement in injunction suit.**

*Cross-References.*

Assessment of damage on dissolution of bond in general, see ante, § 187.

Review as dependent on motion for new trial, see "Appeal and Error," § 286.

(a) In the absence of statute a court of equity cannot in an injunction suit grant relief on the injunction bond; and hence upon dissolving an injunction will not enforce payment of damages in the original cause, but will leave the parties to their independent action on the bond.—*American Bonding Co v. State*, 120 Md. 305, 87 Atl. 922.

**§ 242. Actions.**

*Cross-Reference.*

Enforcement in action to reform, see "Reformation of Instruments," § 47.

**§ 243.— Rights of action.**

(a) Where the condition of a bond is that, if the obligor "shall prosecute said writ of injunction with effect, etc., then the obligation to be null and void," no action lies on the bond if no writ is issued.—*Eakle v. Smith*, 27 Md. 467.

(b) Where a street was laid out through the land of A. and B., and B. enjoined the opening thereof, giving bond conditioned to pay "all damages occasioned by the granting of the injunction," A. could not maintain an action on such bond on the ground that the injunction prevented the sale of his land for building lots at the price that could have been obtained for them at the time of granting the injunction if the street had then



been opened, since he could acquire no right until the street was actually opened and surrendered to the public.—*Stewart v. State*, 20 Md. 97.

#### § 244. Conditions precedent.

(a) No action at law can be maintained upon an injunction bond until the final determination of the cause in which the injunction issued, even though the injunction has been dissolved because improperly granted.—*Gray v. Veirs*, 33 Md. 159.

#### § 245.— Defenses.

(a) If the court had jurisdiction in a suit by a debtor for an accounting and to enjoin the creditor from enforcing a mortgage pending an accounting to render a decree for the relief prayed, it cannot be impeached for irregularities in a suit on the injunction bond given in the principal action.—*American Bonding Co v. State*, 120 Md. 305, 87 Atl. 922.

(b) Where an injunction is a nullity, there can be no redress on the injunction bond.—*Wingert v. Brewer*, 116 Md. 518, 82 Atl. 157.

(c) Where an injunction bond provided that the obligor should prosecute his writ with effect, and satisfy and save harmless the obligee, if the same should not be prosecuted with effect, and in such case pay all costs and damages that might be occasioned by the issuing of the injunction, it was no defense to an action on the bond that the obligee had not obeyed the writ.—*Phoenix Pad Co. v. United States*, 111 Md. 549, 75 Atl. 394; *Same v. American Coat & Pad Co.*, Id.

(d) Where an injunction bond recites the pendency of the proceedings in which the injunction was ordered, the obligee, in an action on the bond, cannot deny the existence and effect of the injunction.—*Le Strange v. State*, 58 Md. 26.

(e) That no permit had been obtained to erect the building whose erection was enjoined until after the dissolution of the injunction is no defense to an action on the injunction bond.—*Le Strange v. State*, 58 Md. 26.

(f) It is no defense to a suit upon an injunction bond that a bill in equity was prose-

cutted with effect until the death of the complainants, that no administration had been obtained upon the estate of either of them, and that the injunction was dissolved by the final order of the Court of Chancery.—*Lloyd v. Burgess*, 4 Gill 187.

#### § 246.— Jurisdiction and venue.

##### Cross-References.

Exclusive and concurrent jurisdiction of state and federal courts, see "Courts," § 489.

Jurisdiction of federal court as dependent on constitutional question being involved, see "Courts," § 282.

#### § 247.— Time to sue and limitations.

#### § 248.— Parties.

(a) Trustees appointed by the court simply to sell property have no title or interest in the property, and cannot sue upon an injunction bond for damages to the property caused by the injunction restraining the sale.—*State v. Albert*, 121 Md. 222, 88 Atl. 119; *Same v. Fidelity & Deposit Co.*, Id.; *Williams v. Fidelity & Deposit Co.*, Id.

(b) Where, in a proceeding to restrain the sale of property by trustees appointed by the court to make the sale, the injunction bond was taken in the name of the state as obligee, under Code, art. 16, § 175, the trustees were not joint obligees with the real parties interested, and where they joined with such parties in a suit upon the bond, there was a misjoinder of parties plaintiff.—*State v. Albert*, 121 Md. 222, 88 Atl. 119; *Same v. Fidelity & Deposit Co.*, Id.; *Williams v. Fidelity & Deposit Co.*, Id.

(c) Though the interests of trustees appointed by the court simply to sell property were affected by a wrongful injunction restraining the sale because of a lessening of their commissions, they could not unite with the real parties interested in the property, in an action upon the bond, because the parties' interests were not joint.—*State v. Albert*, 121 Md. 222, 88 Atl. 119; *Same v. Fidelity & Deposit Co.*, Id.; *Williams v. Fidelity & Deposit Co.*, Id.

(d) The fact that one of the obligors on an injunction bond has become insolvent, and that a permanent trustee in insolvency has been appointed for his estate, is no ground for objection to joining him in an action on

the bond. — *Wallis v. Dilley*, 7 Md. 237. [Cited and annotated in 16 L. R. A. (N. S.) 51, 66, on recovery on injunction bond of attorneys' fees necessarily expended in dissolving injunction.]

§ 249.— Process and appearance.

§ 250.— Pleading.

*Cross-Reference.*

Aider by pleading of adverse party, see "Pleading," § 403.

(a) In an action on an injunction bond by the state to the use of the wife of A., the declaration set forth that an injunction was issued in a suit between defendant and A. and wife; that the bond sued on, a copy of which was filed and profert of the bond made, was given by defendant; that the injunction was dissolved, whereby the bond became forfeited, but defendant failed to pay plaintiff the amount thereof. Code 1860, art. 16, § 108, provides that such a bond may be sued on by any person interested, as public bonds may be. *Held*, that the declaration sufficiently showed the right and interest of the plaintiff, and sufficiently assigned a breach of the bond. — *Le Strange v. State*, 58 Md. 26. (See Code 1911, art. 16, § 175.)

(b) An assignment of breaches on an injunction bond, charging that the principals did not pay judgment and costs recited in the bond and the damages, etc., is sufficient as averring facts which, if true, might be avoided by rejoining matter that should properly come from the other side, viz. the successful prosecution of the injunction. — *Burgess v. Lloyd*, 7 Md. 178.

(c) In an action on an injunction bond defendants pleaded a general performance, and plaintiff replied that defendants did not prosecute the injunction with effect, that they did not pay the judgment and costs, and that they did not pay the damages, and defendants rejoined, alleging that they did prosecute with effect and did pay the judgment, etc., and put themselves on the country, and after a similiter issue was joined. *Held*, that both parties were estopped from denying the writ had issued as recited in the bond. — *Burgess v. Lloyd*, 7 Md. 178.

(d) Where, in an action on an injunction bond the recitals and condition of which mentioned a judgment, the defendant pleaded a general performance, the plaintiff as-

signed a breach, the defendant rejoined nul tiel record, and the plaintiff surrejoined, traversing the rejoinder, and issue was joined to the court, who found that there was such record, and the plaintiff afterwards introduced a record as evidence to the jury to support the issue joined on the plea of nul tiel record, to which the defendant objected, it was *held* that the defendant's rejoinder would have been held bad if demurred to. — *Hardey v. Coe*, 5 Gill 189.

§ 251.— Evidence.

(a) An instruction in an action on an injunction bond requiring proof of plaintiff's loss by record evidence was properly refused. — *Phoenix Pad Co. v. United States*, 111 Md. 549, 75 Atl. 394; *Same v. American Coat & Pad Co.*, Id.

(b) In an action on an injunction bond, given in a patent infringement suit, where it was shown by plaintiff that it had been compelled by the injunction to change its method of manufacture, involving increased cost, or to abandon its business, and plaintiff's cost expert and its secretary and treasurer both testified that the increase in cost was from \$2.45 to \$2.50 per 1,000 pairs of shoulder pads, explaining in detail how the estimate of cost was reached, the evidence of damage was sufficiently specific to warrant recovery therefor. — *Phoenix Pad Co. v. United States*, 111 Md. 549, 75 Atl. 394; *Same v. American Coat & Pad Co.*, Id.

(c) In a suit on an injunction bond, the injunction having been to restrain plaintiff from entering on certain land the title to which had been decided to be in him, in an action of trespass between him and the principal in the bond, *held*, that the judgment in the trespass suit was admissible to show damage. — *Banks v. State*, 62 Md. 88.

(d) In a suit on an injunction bond, evidence of the proceedings in the equity suit, so far as related to the granting, continuance, and dissolution of the injunction, is admissible. — *Le Strange v. State*, 58 Md. 26.

(e) In an action on a bond given for an injunction restraining the enforcement of a judgment obtained against one of the defendants, it was not competent to ask the judgment creditor whether, at the time he

obtained the judgment, he was not insolvent and indebted to the firm of which the judgment debtor was a member to a large amount, and whether he did not have the judgment entered to the use of third parties for the purpose of hindering and delaying his own creditors, as such matters were involved in, and settled by, the injunction suit.—*Hopkins v. State*, 53 Md. 502.

(f) A. procured B. to be enjoined from completing a stable. The injunction was dissolved. In a suit on the bond, A. sought to introduce evidence to prove that the stable was upon his land. *Held*, that he could not prove title in this collateral way, as he was concluded on that question by the decision in the injunction case.—*Lange v. Wagner*, 52 Md. 310, 36 Am. Rep. 380. [Cited and annotated in 39 L. R. A. (N. S.) 182, on measure of damages for wrongful injunction against building.]

(g) A. procured an injunction to issue, stopping the erection of a brick stable by B. in place of a frame one out of repair and partially torn down by him. B.'s business was that of supplying customers with milk, and, while the injunction was in force, his cows, deprived of their accustomed shelter, were exposed to the weather. *Held*, in an action on the injunction bond, that testimony was admissible as to the effect of the exposure on the cows; this being an element of damage.—*Lange v. Wagner*, 52 Md. 310, 36 Am. Rep. 380. [Cited and annotated, see supra.]

(h) In an action on an injunction bond given in proceedings to restrain the erection of a stable, a survey and measurement of the ground on which the stable stood, made by a surveyor, not in the presence or by the authority of plaintiff, or by any authority of law, for the purpose of proving that the stable was erected partly on land belonging to defendant, were ex parte and inadmissible.—*Lange v. Wagner*, 52 Md. 310, 36 Am. Rep. 380. [Cited and annotated, see supra.]

(i) Where plaintiff had been restrained from continuing the construction of a stable for his cows, and the injunction was subsequently dissolved, evidence offered by defendant, in an action on the injunction bond, for the purpose of proving that the stable

was built in part on land belonging to defendant, *held* not competent, since such question was concluded by the decision of the injunction case, and could not be tried in this collateral way.—*Lange v. Wagner*, 52 Md. 310, 36 Am. Rep. 380. [Cited and annotated, see supra.]

(j) In an action on an injunction bond, defendants pleaded a general performance, and plaintiff replied that the defendants did not prosecute the injunction with effect, that they did not pay the judgment and costs, and that they did not pay the damages; and defendants rejoined, alleging that they did prosecute with effect, and did pay the judgment, etc., and put themselves upon the country, and after a similitur issue was joined. *Held*, that the burden of proof was on defendant as sustaining the affirmative of the issue.—*Burgess v. Lloyd*, 7 Md. 178.

#### § 252.—Damages.

##### Annotation.

Recovery upon injunction bond of attorneys' fees necessarily expended in dissolving the injunction.—16 L. R. A. (N. S.) 50; 33 L. R. A. (N. S.) 844, notes.

(a) As a rule, recovery in an action on an injunction bond only includes such actual damages suffered as are the proximate consequence of issuing the injunction; and, where an injunction bond decreed payment of any sum found due from plaintiff to defendant and required plaintiff to perform the decree rendered, the surety on the bond is liable for the amount of the decree.—*American Bonding Co. v. State*, 120 Md. 305, 87 Atl. 922.

(b) In an action on an injunction bond, the recovery must be confined to such actual damages as the plaintiff shows he suffered as a natural and proximate consequence of the injunction.—*Phoenix Pad Co. v. United States*, 111 Md. 549, 75 Atl. 394; *Same v. American Coat & Pad Co.*, Id.

(c) Where the removal of a mill is delayed by injunction, the true rule of damages is the rental value of a mill of the same capacity for the same time, to which may be properly added the payment of a watchman, and of the manager of the mill, under a subsisting contract, during the time the mill is idle.—*Wood v. State*, 66 Md. 61, 5 Atl. 476. [Cited and annotated in 52 L. R. A. 59, on lost profits from tort as damages; in 16 L. R.

A. (N. S.) 51, on recovery on injunction bond of attorneys' fees necessarily expended in dissolving injunction.]

(d) Attorney's fees paid to procure the dissolution of an injunction are not recoverable as damages in an action on the injunction bond.—*Wood v. State*, 66 Md. 61, 5 Atl. 476. [Cited and annotated, see supra.]

(e) Where plaintiff, a dairyman, was prevented by injunction from continuing the erection of a brick stable which he had begun for his cows, the injury done to his cattle by exposure to the weather, requiring extra care and food, and decreasing the quantity of milk from them, was a proper element of damage on the injunction bond.—*Lange v. Wagner*, 52 Md. 310, 36 Am. Rep. 380. [Cited and annotated, see supra, § 251.]

(f) In August, 1877, complainant was stopped by injunction from continuing the erection of a stable on his premises. On December 6th, the injunction was dissolved, and plaintiff completed the building about December 25th. Held, in an action on the injunction bond, that an instruction excluding from the computation of damages all evidence of the rental value of the stable if it had been completed was correct.—*Lange v. Wagner*, 52 Md. 310, 36 Am. Rep. 380. [Cited and annotated, see supra, § 251.]

(g) Damages accruing to defendant in injunction proceedings by reason of delay and obstruction of his rights during the pendency of an appeal from an order of dissolution of an injunction are recoverable on the bond.—*Hamilton v. State*, 32 Md. 348.

(h) The costs of an appeal from an order dissolving an injunction are not recoverable on the injunction bond, since the appeal bond is alone answerable therefor.—*Hamilton v. State*, 32 Md. 348.

(i) Where the injunction prayed by the bill in equity was to restrain the defendants from selling or intermeddling with certain goods, and to obtain a decree applying the same to the payment of the debt of the complainant and others, it was held that the amount properly recoverable in an action on the injunction bond was the loss in value of the goods during the operation of the injunction, not exceeding the penalty of the

bond, with interest thereon from the time of the institution of the suit.—*Levy v. Taylor*, 24 Md. 282.

(j) An ordinance of the city of Baltimore having been passed, by authority of act 1838, c. 266, to lay out a street through the lands of A. and B., B. obtained an injunction to prevent it, and executed an injunction bond with the condition, among others, that he would satisfy and pay all damages that might be occasioned by the granting of the injunction. After the injunction was dissolved, A. sued B. on the bond, claiming damages for the alleged depreciation in the value of his land, which was chiefly valuable for building lots, during the time that the opening of the street was delayed by the injunction. Held, that such claim could only be sustained on the ground that the injunction operated to infringe or deprive A. of some vested legal right which the bond was intended to protect.—*Stewart v. State*, 20 Md. 97.

(k) In an action on an injunction bond, where the injunction forbade the payment of money by an insurance company, interest is recoverable thereon as a matter of right up to the day the money is paid into court; and an offer by the company to invest the amount, less costs and expenses thereon, is not admissible in evidence to reduce the interest.—*Wallis v. Dilley*, 7 Md. 237. [Cited and annotated in 16 L. R. A. (N. S.) 51, 66, on recovery on injunction bond of attorney's fees necessarily expended in dissolving injunction.]

(l) The recovery on an injunction bond is limited, in regard to costs and expenses, to such as may have accrued from the time of the issuing of injunction down to the affirmation of the order for its dissolution.—*Wallis v. Dilley*, 7 Md. 237. [Cited and annotated, see supra.]

(m) On dissolution of an injunction, attorney's fees paid in the injunction suit by defendant therein are not recoverable as damages in an action on the injunction bond.—*Wallis v. Dilley*, 7 Md. 237. [Cited and annotated, see supra.]

(n) An injunction bond reciting an injunction against the enforcement of a judgment rendered at September term creates no lia-

bility for wrongfully enjoining a judgment rendered at April term.—*Morgan v. Blackiston*, 5 H. & J. 61.

(c) Where enforcement of a money judgment had been enjoined, and afterwards the judgment creditor's attorney had given a receipt in full for a balance, and paid same to the client, but had not computed interest for the time covered by the injunction, such interest may be recovered.—*Gist v. McGuire*, 4 H. & J. 9.

#### § 253.— Trial.

(a) In an action on an injunction bond, defendants prayed an instruction that plaintiffs could not recover as damages any estimated loss due to supposed increased cost of manufacturing by reason of the injunction but only actual damages suffered which was the direct and immediate consequence of the issuance of the injunction, and the amount of which loss must be proven by "clear and definite data," etc. *Held*, that defendant could not object to a modification of the instruction by substituting the word "reasonable" for the words "clear and definite," and that the word "evidence" or "facts" should also have been substituted for the word "data."—*Phoenix Pad Co. v. United States*, 111 Md. 549, 75 Atl. 394; *Same v. American Coat & Pad Co.*, *Id.*

(b) In an action on an injunction bond, an instruction that the jury might find for plaintiff "in such damages, if any, as shall appear from the evidence that he has actually and necessarily or directly sustained by reason of the granting and serving of the writ of injunction," and "that actual, natural, and approximate damages are such as are the direct, necessary, and natural result of the act complained of, and from which the injuries alleged to have been sustained," was correct.—*Lange v. Wagner*, 52 Md. 310, 36 Am. Rep. 380. [Cited and annotated in 39 L. R. A. (N. S.) 182, on measure of damages for wrongful injunction against building.]

(c) After overruling a prayer affirming that acceptance by the court was necessary to an injunction bond, it is error in the court to rule that signing, sealing, and delivery were sufficient for such bond.—*Burgess v. Lloyd*, 7 Md. 178.

#### § 254.— Judgment.

##### Cross-References.

Fraud as ground for equitable relief, see "Judgment," § 443.

Remedy by motion as bar to equitable relief against, see "Judgment," § 407.

Waiver of right to equitable relief, see "Judgment," § 448.

Want of service of process as ground for equitable relief against, see "Judgment," § 419.

#### § 255.— Appeal and error.

#### § 256.— Costs.

### IX. WRONGFUL INJUNCTION.

##### Cross-Reference.

Malicious actions, see "Malicious Prosecution," §§ 10, 14.

#### §§ 257-261. (See Analysis.)

### INJURIA SINE DAMNO.\*

##### Cross-References.

See "Action," §§ 1, 3; "Nuisance," § 5; "Torts."

Construction of public improvement, see "Municipal Corporations," § 377.

Construction of railroad, see "Railroads," § 113.

Operation of railroad, see "Railroads," § 222.

### INJURIES.\*

##### Cross-References.

See "Assault and Battery"; "Collision"; "Conspiracy"; "Damages"; "Death"; "False Imprisonment"; "Forcible Entry and Detainer"; "Fraud"; "Malicious Prosecution"; "Libel and Slander"; "Negligence"; "Nuisance"; "Seduction"; "Torts"; "Trespass"; "Trove and Conversion"; "Waste."

Actions for personal injuries which abate, see "Abatement and Revival," § 58.

By animals, see "Animals," §§ 66-102.

By servants, liability of master, see "Master and Servant," §§ 300-335.

From construction and maintenance of bridges, see "Bridges," § 23.

From construction or operation of gas works, see "Gas," § 14½.

From defective or dangerous condition of leased premises, see "Landlord and Tenant," §§ 162-170.

From defects and obstructions in highways, see "Highways," §§ 187-216.

From defects and obstructions in streets, see "Municipal Corporations," §§ 755-826.

From escape or explosion of gas, see "Gas," §§ 15-20.

From explosives, see "Explosives," §§ 6-12.

From negligence in dispensing medicines, see "Druggists," §§ 7-9.

\*Annotation: Words and Phrases, same title.

From negligence in practice of medicine and surgery, see "Physicians and Surgeons," §§ 14-18.  
 From operation of railroads, see "Railroads," §§ 256-488.  
 From operation of street railroads, see "Street Railroads," §§ 78-122.  
 From poisons, see "Poisons," § 6.  
 From torts of municipalities, see "Municipal Corporations," §§ 723-857.  
 From use of bridges, see "Bridges," §§ 34-46.  
 From use of highway, see "Highways," §§ 165-186.  
 From use of streets, see "Municipal Corporations," §§ 701-707.  
 Incident to production or use of electricity, see "Electricity," §§ 12-19.  
 Insurance against, see "Insurance."  
 Liabilities of vessels and owners for torts, see "Shipping," §§ 78-87.  
 Survival of action for personal injuries, see "Abatement and Revival," § 54.  
 To animals, see "Animals," §§ 37-45, 77-88.  
 To bridges, approaches, or appliances, see "Bridges," § 27.

To crop, see "Landlord and Tenant," § 139.  
 To electrical works, conductors, or appliances, see "Electricity," § 20.  
 To gas works, mains, or pipes, see "Gas," § 21.  
 To goods in transit, see "Carriers," §§ 107-231.  
 To passengers, see "Carriers," §§ 280-386.  
 To servants, see "Master and Servant," §§ 85-299.

### INJURIOUS WORDS.

#### *Cross-Reference.*

See "Libel and Slander."

### INK.

#### *Cross-Reference.*

Opinion evidence as to age, see "Evidence," § 548.

### INLAND BILLS OF EXCHANGE.\*

#### *Cross-Reference.*

See "Bills and Notes," § 13.

## INNKEEPERS.\*

### *Scope-Note.*

[INCLUDES regulation of inns, hotels, boarding houses, lodging houses, and all houses furnishing for compensation accommodation as a temporary home; and mutual rights, duties, and liabilities of keepers of such houses and their guests, boarders, or lodgers.

[EXCLUDES regulation of sale of intoxicating liquors (see "Intoxicating Liquors"); and discrimination by reason of race, color, etc. (see "Civil Rights").

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Power to regulate.
- § 2. Statutory and municipal regulations.
- § 3. Who are innkeepers.
- § 4. Licenses and taxes.
- § 5. Buildings.
- § 6. Conduct of business.
- § 7. Duty to receive guests.
- § 8. Who are guests, boarders, or lodgers.
- § 9. Duty to furnish accommodations.
- § 10. Injury to person of guest.
- § 11. Loss of or injury to property of guest.
- § 12. Compensation.
- § 13. Lien.
- § 14. Penalties for violations of regulations.
- § 15. Offenses by innkeepers.
- § 16. Offenses by guests, boarders, or lodgers.

\*Annotation: Words and Phrases, same title.

*Cross-References.*

Act requiring innkeeper to obtain license and give bond as violating private and natural right, see "Constitutional Law," § 82.  
 Acts of servant for which master is liable, see "Master and Servant," § 306.  
 As bailee of baggage the owner of which does not become a guest, see "Bailment," § 5.  
 As liverymen, see "Livery Stable Keepers," § 4.  
 Assault on guests, see "Assault and Battery," § 9.  
 Attorney's fees as element of damage in action by guest against innkeeper, see "Damages," § 72.  
 Authority of agent, see "Principal and Agent," § 101.  
 Constitutionality and validity of acts and ordinances imposing license taxes, see "Licenses," § 7.  
 Contracts for board, lodging, and support in general, see "Contracts," § 191.  
 Contract to keep hotel closed as in restraint of trade, see "Contracts," § 117.  
 Conversion of property of guest, see "Trover and Conversion," § 7.  
 Creation of innkeeper's lien on goods of third person as deprivation of property without due process of law, see "Constitutional Law," § 800.  
 Discrimination as to guests by reason of race, color or condition, see "Civil Rights," § 5.  
 Entry of lodging house as trespass, see "Trespass," § 25.  
 Fellow servants, see "Master and Servant," § 197.

Furnishing oleomargarine to guests without their knowledge, see "Food," §§ 14-16.  
 Grant of special privilege to hotel keepers, see "Constitutional Law," § 205.  
 Imprisonment for removing baggage without paying bill as imprisonment for debt, see "Constitutional Law," § 83.  
 Injury to guest from defect in elevator, see "Carriers," § 286.  
 Liability of hotel keeper for injuries to his employees, see "Master and Servant," § 96.  
 Liability of sleeping-car companies as innkeepers, see "Carriers," § 413.  
 Liability to person other than guest for injuries resulting from defect in building, see "Negligence," § 31.  
 Lien for supplies furnished to hotel, see "Liens," § 8.  
 Liens for wages of employees, see "Master and Servant," § 82.  
 Maintenance of hotel on railroad right of way, see "Railroads," § 73.  
 Nuisance affecting hotel, see "Nuisance," § 3.  
 Office of hotel as public place within disorderly conduct ordinance, see "Disorderly Conduct," § 1.  
 Penalties for keeping inn without license, see "Penalties," §§ 23, 25.  
 Place of taxation, see "Taxation," § 260.  
 Recoupment of amount due for meal in action against innkeeper for amount of bill converted by waiter, see "Set-Off and Counter-Claim," § 27.  
 Registers as evidence, see "Evidence," § 351.  
 Regulations as deprivation of property without due process of law, see "Constitutional Law," § 296.

*Annotation.*

Liability for personal injury to guest from condition of inn premises.—43 L. R. A. (N. S.) 657, note.  
 Liability for ejecting guests.—42 L. R. A. (N. S.) 830, note.  
 Liability for serving unfit food.—40 L. R. A. (N. S.) 480, note.  
 Liability for injury caused by lack or insufficiency of fire escapes.—15 L. R. A. 160; 10 L. R. A. (N. S.) 177; 21 L. R. A. (N. S.) 178; 39 L. R. A. (N. S.) 744, notes.  
 Presumption of negligence of innkeeper from injury to guest.—20 L. R. A. (N. S.) 1027, note.  
 Liability of innkeeper or restaurant keeper for assault by his servant upon a patron.

—12 L. R. A. (N. S.) 1155, note.  
 Liability for malicious acts of servant towards guest.—4 L. R. A. (N. S.) 485, note.  
 Liability, at common law, of a saloonkeeper for personal injury to patron.—4 L. R. A. (N. S.) 649, note.  
 Liability for injury to guest by servant.—69 L. R. A. 642, note.  
 Payment of board by week as affecting relation between proprietor of hotel and one who makes no arrangement as to time of stay.—14 L. R. A. (N. S.) 476; 42 L. R. A. (N. S.) 122, notes.  
 Innkeeper's lien.—21 L. R. A. 229, note.  
 Duty of innkeeper as to shelter and entertainment of traveler.—2 B. R. C. 684, note.

**§ 1. Power to regulate.***Annotation.*

Power to require license to keep inn, hotel, boarding or lodging house, or restaurant.—L. R. A. 1915B, 1097, note.  
 Effect of failure to procure license on

right to recover for board.—1 L. R. A. (N. S.) 1159, note.

**§ 2. Statutory and municipal regulations.***Annotation.*

See Code, art. 71, §§ 1-9.

§§ 8-10. (See Analysis.)

§ 11. Loss of or injury to property of guest.

*Annotation.*

Duty and liability of boarding-house keeper or innkeeper with respect to property of boarder as distinguished from guest.

—45 L. R. A. (N. S.) 31, note.

Liability for loss or destruction of commercial traveler's samples.—35 L. R. A. (N. S.) 350, note.

Duty of innkeeper as to effects of one who has left without intention of returning as guest.—28 L. R. A. (N. S.) 495, note.

Effect of statute limiting innkeeper's liability for goods not delivered into his custody.—22 L. R. A. (N. S.) 577, note.

Effect of contributory negligence of guest to defeat recovery against innkeeper.—6 L. R. A. 486, note.

(a) An innkeeper is not liable for goods lost by a guest in his inn unless they were lost by his fraud or negligence.—*Treiber v. Burrows*, 27 Md. 130. (For former appeal, see *Burrows v. Treiber*, 21 Md. 320, 83 Am. Dec. 590.) [Cited and annotated in 29 L. R. A. 93, on bailee's liability for servant's wrongful appropriation; in 22 L. R. A. (N. S.) 579, on effect of statute limiting innkeeper's liability for goods delivered into his custody.]

(b) In an action against an innkeeper for goods lost by a guest in his inn, it is error to refuse to charge that the defendant is not responsible for such goods, unless the jury find that they were designed by plaintiff for his use while on his journey or while a guest in the inn.—*Treiber v. Burrows*, 27 Md. 130. (For former appeal, see *Burrows v. Treiber*, 21 Md. 320, 83 Am. Dec. 590.) [Cited and annotated, see supra.]

(c) In order to ascertain what amount of money would be convenient to meet the traveling expenses of the guest at an inn for the loss of which the innkeeper would be liable, the condition of the guest, his mode of life, his habits, tastes, nature, character and object of his journey such must be taken into consideration by the jury since it is the province of the jury in such cases to determine the question of sufficiency, under such directions and limitations as the court may prescribe.—*Treiber v. Burrows*, 27 Md. 130. (For former appeal, see *Burrows v. Treiber*, 21 Md. 320, 83 Am. Dec. 590.) [Cited and annotated, see supra.]

(d) Whether a chest of tea is an article necessary and suitable for the journey of the guest at an inn is a question of fact for the jury to determine under proper limitations to be explained by the court.—*Treiber v. Burrows*, 27 Md. 130. (For former appeal, see *Burrows v. Treiber*, 21 Md. 320, 83 Am. Dec. 590.) [Cited and annotated, see supra.]

(e) Money in the trunk of a guest at an inn, to constitute part of his baggage for which the innkeeper is responsible in case of loss, should be such an amount only as would be convenient to meet his traveling expenses.—*Treiber v. Burrows*, 27 Md. 130. (For former appeal, see *Burrows v. Treiber*, 21 Md. 320, 83 Am. Dec. 590.) [Cited and annotated, see supra.]

(f) An innkeeper is liable for a watch guard and pocketbook containing a sum of money, no larger than is reasonable for traveling expenses, stolen from a guest's room at night; the door being locked, but not bolted, the statute, Code 1860, art. 70, §§ 5, 6, not covering such articles.—*Maltby v. Chapman*, 25 Md. 310. (See Code 1911, art. 71, §§ 5, 6.) [Cited and annotated in 22 L. R. A. (N. S.) 579, on effect of statute limiting innkeeper's liability for goods not delivered into his custody.]

(g) A guest not being required, under Code 1860, art. 70, §§ 5, 6, to deposit money with the landlord necessary for his traveling expenses, whether the sum of money lost was reasonable and necessary for such traveling expenses is for the jury.—*Maltby v. Chapman*, 25 Md. 310. (See Code 1911, art. 71, §§ 5, 6.) [Cited and annotated, see supra.]

(h) Under Code 1860, art. 70, §§ 5, 6, relieving an innkeeper from liability to his guests for loss of money, plate, and jewelry not deposited with him, where he has procured an iron safe and given notice to the guests, a guest is not required to deposit in the safe of an office in a hotel a sum of money reasonably necessary for traveling expenses.—*Maltby v. Chapman*, 25 Md. 310. (See Code 1911, art. 71, §§ 5, 6.) [Cited and annotated, see supra.]

(i) It is not necessary, when the goods are proved to be lost, to prove negligence in the innkeeper to make him liable for the loss.—



*Burrows v. Treiber*, 21 Md. 320, 83 Am. Dec. 590. (For subsequent appeal, see *Treiber v. Burrows*, 27 Md. 130.)

(j) A delivery of the goods of a guest into the custody of an innkeeper is not necessary to charge him with them; for although the guest does not deliver them, or acquaint the innkeeper with them, still the latter is bound to pay for them if they are stolen or carried away, even though the person who took them away is unknown.—*Burrows v. Treiber*, 21 Md. 320, 83 Am. Dec. 590. (For subsequent appeal, see *Treiber v. Burrows*, 27 Md. 130.)

(k) When the gross carelessness of the guest is alleged to discharge the innkeeper's liability, the evidence of such neglect must be confined to the time while the guest was at the inn, and evidence cannot be admitted to show the plaintiff's carelessness before becoming a guest of the inn or subsequent to his departure therefrom.—*Burrows v. Treiber*, 21 Md. 320, 83 Am. Dec. 590. (For subsequent appeal, see *Treiber v. Burrows*, 27 Md. 130.)

(l) A guest paid his bill, and was thereby entitled to the use of his room for the entire day. He left his trunk there, with 25 cents for portage; the clerk agreeing to send the trunk at 4 o'clock to a steamer. Held, that the innkeeper's liability continued until the trunk was delivered on board the boat, and that the consideration for this agreement was the increased custom expected from this convenience for travelers.—*Giles v. Fauntleroy*, 13 Md. 126. [Cited and annotated in 28 L. R. A. (N. S.) 496, 498, on duty of innkeeper as to effects of one leaving without intention of returning as guest.]

(m) Surgical instruments are not "baggage" for which an innkeeper is liable, unless the owner be connected with the profession.—*Giles v. Fauntleroy*, 13 Md. 126. [Cited and annotated, see supra.]

(n) A Colt's pistol and a dozen silver teaspoons are not properly part of a gentleman's luggage.—*Giles v. Fauntleroy*, 13 Md. 126. [Cited and annotated, see supra.]

(o) The innkeeper is responsible only for his guest's baggage, and that term includes articles for use and convenience on the journey, but not merchandise or other valu-

ables, such as silver knives, forks, and spoons, the act of 1854, c. 323, having no application, as the loss occurred before its passage.—*Pettigrew v. Barnum*, 11 Md. 434, 69 Am. Dec. 212. (See Code, art. 71, §§ 5, 6.) [Cited and annotated in 39 L. R. A. (N. S.) 636, on household goods or supplies as baggage.]

(p) Common innkeepers, without any particular contract or agreement for that purpose, are answerable for all losses in their inns, either through their own acts or negligence, or those of their servants, to travelers and guests received by them.—*Towson v. Havre de Grace Bank*, 6 H. & J. 47, 14 Am. Dec. 254. [Cited and annotated in 28 L. R. A. (N. S.) 496, on duty of innkeeper as to effects of one leaving without intention of returning as guest.]

(q) The innkeeper is only liable, in the case of the loss of money or other dead property, where the party losing it was a guest at the inn at the time of the loss.—*Towson v. Havre de Grace Bank*, 6 H. & J. 47, 14 Am. Dec. 254. [Cited and annotated, see supra.]

(r) Where goods were intrusted to an innkeeper by a guest who is a servant of the owner, an action for their loss may be brought in the owner's name.—*Towson v. Havre de Grace Bank*, 6 H. & J. 47, 14 Am. Dec. 254. [Cited and annotated, see supra.]

(s) In an action against an innkeeper for the loss of money or other property while stopping at his inn, the declaration must allege that the party losing it was a guest at the inn at the time of such loss.—*Towson v. Havre de Grace Bank*, 6 H. & J. 47, 14 Am. Dec. 254. [Cited and annotated, see supra.]

(t) In an action against an innkeeper for goods lost in his house by a guest, the court, in sustaining a verdict for the plaintiff, held, that parol evidence might be introduced to prove that the defendant was an innkeeper.—*Owings v. Wyant*, 3 H. & McH. 393.

§§ 12-16. (See Analysis.)

### INNOCENCE.\*

#### Cross-References.

Presumptions as to innocence, see "Criminal Law," § 308; "Evidence," § 60.

Presumptions in proceedings to admit to bail, see "Bail," § 49.

\*Annotation: Words and Phrases, same title.

**INNOCENT PURCHASER.\****Cross-References.*

See "Ejectment," § 142.  
 Assignees in general, see "Assignments," §§ 87, 102; "Assignments for Benefit of Creditors," §§ 146, 184, 228.  
 Assignees of mortgages, see "Mortgages," § 257.  
 Attachment creditors, see "Attachment," § 180.  
 Cancellation of instruments as against bona fide purchasers, see "Cancellation of Instruments," § 31.  
 Devisees, see "Wills," § 722.  
 Discharge of maritime lien by delay in assertion against bona fide purchasers, see "Maritime Liens," § 50.  
 Duration of judgment lien as against bona fide purchasers, see "Judgment," § 796.  
 Equitable relief against judgment as against, see "Judgment," § 453.  
 Evidence as to good faith of holders or bonds, see "Bonds," § 132.  
 From bailee, see "Bailment," § 7.  
 From debtor, see "Bankruptcy," §§ 173, 182, 203.  
 From devisees or legatees, see "Wills," § 845.  
 From heirs or distributees, see "Descent and Distribution," § 134.  
 From insane person, see "Insane Persons," § 61.  
 From insolvent corporations, see "Corporations," § 543.  
 From transferee of bankrupt, see "Bankruptcy," § 186.  
 Grantees in fraudulent conveyances, see "Fraudulent Conveyances," §§ 164-171, 186, 187.  
 Maritime liens, effect of transfer of vessel to innocent purchaser, see "Maritime Liens," § 47.  
 Mortgages, see "Chattel Mortgages," §§ 139, 153-157.  
 Notice from pendency of suit, see "Lis Pendens."  
 Notice to attorney as notice to client, see "Attorney and Client," § 104.  
 Of bills of exchange or promissory notes in general, see "Bills and Notes," §§ 235, 327-334.  
 Of bills of lading, see "Carriers," § 59.  
 Of bills or notes, secured by mortgage, see "Mortgages," § 258.  
 Of bonds, see "Bonds," §§ 93-102.  
 Of corporate bonds, see "Corporations," § 472.  
 Of corporate stock, see "Corporations," §§ 108, 149, 244.  
 Of crops subject to agricultural lien, see "Agriculture," §§ 13, 15.  
 Of homestead, see "Homestead," § 129.  
 Of land subject to water easement, see "Waters and Water Courses," § 154.  
 Of mortgaged property, see "Chattel Mortgages," §§ 153, 154; "Mortgages," § 174.  
 Of municipal bonds or other securities, see "Municipal Corporations," §§ 941-948.  
 Of nonnegotiable instruments, see "Bills and Notes," § 275.

Of order for payment of wages, see "Master and Servant," § 69.  
 Of pawn tickets, see "Pawnbrokers," § 5.  
 Of personal property, see "Sales," §§ 234-245, 473.  
 Of property fraudulently conveyed, see "Fraudulent Conveyances," §§ 196-204.  
 Of property sold by trustee in bankruptcy, see "Bankruptcy," § 269.  
 Of property sold on execution, see "Execution," §§ 271-274.  
 Of property sold on foreclosure, see "Mortgages," § 536.  
 Of property subject to lien of judgment in justice's court, see "Justices of the Peace," § 131.  
 Of railroad at judicial sale, see "Railroads," § 194.  
 Of real property in general, see "Vendor and Purchaser," §§ 220-245.  
 Of rights in public lands, see "Public Lands," § 138.  
 Of school district warrants or orders, see "Schools and School Districts," § 95.  
 Of standing timber, see "Logs and Logging," § 3.  
 Of trust property, see "Trusts," § 357.  
 Of warehouse receipts, see "Warehousemen," § 17.  
 Of water rights, see "Waters and Water Courses," § 156.  
 Operation and effect of gifts as to, see "Gifts," § 44.  
 Payment by bank of forged or altered paper to innocent holder thereof, see "Banks and Banking," § 190.  
 Pledges, see "Pledges," § 24.  
 Pledges of stock, see "Corporations," § 123.  
 Presumptions and burden of proof as to good faith of holder, see "Bills and Notes," § 497.  
 Protection of bona fide purchasers from railroad company on forfeiture of land grant, see "Public Lands," § 89.  
 Reformation of instruments as against bona fide purchasers, see "Reformation of Instruments," § 29.  
 Reliance upon certificate of acknowledgment, see "Acknowledgment," § 55.  
 Right of bank paying forged or altered check to bona fide holder thereof, see "Banks and Banking," § 147.  
 Rights of owners of negotiable paper as question for jury, see "Bills and Notes," § 537.  
 Rights of purchasers of bills and notes, see "Bills and Notes," §§ 313-322.  
 Sufficiency of evidence, see "Bills and Notes," § 525.  
 Trustees in bankruptcy, see "Bankruptcy," § 151.

**INNUENDO.\****Cross-Reference.*

Averment in complaint for libel and slander, see "Libel and Slander," § 86.

**IN NULLO EST ERRATUM.***Cross-Reference.*

Plea to assignment of errors, see "Appeal and Error," § 749.

\*Annotation: Words and Phrases, same title.

**INOFFICIOUS WILLS.\****Cross-Reference.*

See "Wills," § 82.

**IN PAIS.\****Cross-Reference.*

Estoppel, see "Estoppel," §§ 52-121.

**IN PARI DELICTO.\****Cross-References.*

Rights of action of parties in general, see "Action," § 4.  
 Rights of parties to fraudulent conveyances, see "Fraudulent Conveyances," §§ 172-188.  
 Rights of parties to illegal contracts in general, see "Contracts," §§ 135-140.  
 Rights of parties to illegal contracts to cancellation, see "Cancellation of Instruments," § 28.  
 Rights of parties to illegal contracts to relief in equity in general, see "Equity," § 25.  
 Rights of passenger in pari delicto as to injuries, see "Carriers," § 311.

**IN PERSONAM.\****Cross-References.*

Actions for divorce, see "Divorce," § 7.  
 Admiralty jurisdiction of suit in personam, see "Admiralty," § 16.  
 Equity jurisdiction of the person, see "Equity," § 81.  
 Joinder of action against one defendant in personam and another in rem, see "Action," § 50.  
 Maxim of equity, see "Equity," § 63.  
 Pendency of proceedings in personam in another jurisdiction, ground for abatement, see "Abatement and Revival," § 10.  
 Personal service of process as prerequisite to judgment in personam, see "Judgment," § 17.  
 Remedies in admiralty, see "Admiralty," §§ 26-39.

**INQUEST.\****Cross-References.*

Necessity for inquest of damages as affecting finality of judgment for purpose of appeal, see "Appeal and Error," § 50.  
 Of common or habitual drunkenness, see "Drunkards," § 2.  
 Of coroner, see "Coroners," §§ 10-22.  
 Of coroner, evidence in prosecution for homicide, see "Homicide," §§ 222-227.  
 Of damages in condemnation proceedings, see "Eminent Domain," §§ 206-240.  
 Of damages, on default or interlocutory judgment, see "Damages," §§ 194-204.  
 Of forcible entry and detainer, see "Forcible Entry and Detainer," § 21.  
 Of lunacy, see "Insane Persons," §§ 7-29.  
 Of lunacy, after conviction of crime, see "Criminal Law," § 981.  
 Of office, see "Escheat."

Of office, escheat of property of alien without inquest of office, see "Aliens," § 12.  
 Right to appeal from inquest taken without jurisdiction, see "Appeal and Error," § 112.

**INQUIRY, WRIT OF.\****Cross-Reference.*

See "Damages," § 197.

**INQUISITION.\****Cross-Reference.*

Of lunacy, see "Insane Persons," §§ 7-29.

**IN REM.\****Cross-References.*

Actions for divorce, see "Divorce," § 7.  
 Bankruptcy proceedings, see "Bankruptcy," §§ 52, 53.  
 Contest of will, see "Wills," §§ 212, 326.  
 Enforcement of mechanic's lien, see "Mechanics' Liens," § 245.  
 Equity jurisdiction of property or other subject-matter, see "Equity," § 32.  
 Joinder of action against one defendant in personam and another in rem, see "Action," § 50.  
 Judgment, see "Judgment," §§ 803-812.  
 Malicious prosecution of proceedings in rem, see "Malicious Prosecution," § 13.  
 Maxim of equity, see "Equity," § 63.  
 Nature of proceedings by reclamation district to establish validity of assessment, see "Ambassadors and Consuls," § 3.  
 Personal judgment in proceedings in rem, see "Judgment," §§ 17, 206.  
 Proceedings to enforce lien on exempt property of bankrupt, see "Bankruptcy," § 398.  
 Remedies in admiralty, see "Admiralty," §§ 16, 26-39.  
 Right to jury trial in proceedings in rem, see "Jury," § 19.  
 Searches, seizures, and forfeitures, of intoxicating liquors, see "Intoxicating Liquors," § 244.  
 Statutory attachment as proceedings in rem, see "Attachment," § 1.  
 Substituted service in attachment cases as making action one in rem, see "Attachment," § 208.

**INSANE ASYLUMS.***Cross-Reference.*

See "Asylums."

**INSANE DELUSIONS.\****Cross-References.*

Effect on capacity to commit crime, see "Criminal Law," § 49.  
 Effect on capacity to execute deed, see "Deeds," § 68.  
 Effect on testamentary capacity, see "Wills," § 38.

**INSANE HOSPITALS.***Cross-Reference.*

See "Hospitals."

\*Annotation: Words and Phrases, same title.

## INSANE PERSONS.\*

*Scope-Note.*

[INCLUDES persons affected by mental incapacity of any kind not merely temporary in its nature; evidence of such incapacity; rights and disabilities of such persons in general; custody and protection of their persons and property; and legal proceedings affecting them.

[EXCLUDES temporary mental disability (see "*Contracts*"; "*Deeds*"; and other specific heads); testamentary capacity (see "*Wills*"); competency as witnesses (see "*Witnesses*"); effect of disability on running of statute of limitations (see "*Limitation of Actions*"); insane paupers (see "*Paupers*"); asylums for the insane (see "*Asylums*"); and insanity at the time of commission of an offense as a defense in a prosecution therefor (see "*Criminal Law*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.***I. Disabilities in General.**

- § 1. Who are incompetent.
- § 2. Evidence of incompetency.
- § 3. Constitutional and statutory provisions.
- § 4. Status in general.
- § 5. Capacity to appoint agent or trustee.
- § 6. Estoppel to allege incompetency.

**II. Inquisitions.**

- § 7. Nature and grounds of proceedings.
- § 8. Jurisdiction.
- § 9. Venue.
- § 10. Parties.
- § 11. Death of party pending proceedings.
- § 12. Form and requisites of application.
- § 13. Notice.
- § 14. Appearance and representation by attorney.
- § 15. Custody of person pending proceedings.
- § 16. Injunction and receiver.
- § 17. Commission and execution thereof in general.
- § 18. Submission to jury.
- § 19. Conduct of hearing or trial in general.
- § 20. Reception of evidence.
- § 21. Personal examination.
- § 22. Finding and return.
- § 23. Confirming or vacating finding.
- § 24. New commission or new trial.
- § 25. Traversing and setting aside inquisition.
- § 26. Conclusiveness of adjudication.
- § 27. Review.
- § 28. Costs and fees.
- § 29. Restoration to sanity.

---

\*Annotation: Words and Phrases, same title.

**III. Guardianship.**

- § 30. Nature and grounds.
- § 30½. Public administrator and guardian.
- § 31. Appointment, qualification, and tenure of guardian or committee.
- § 32. — Jurisdiction of courts.
- § 33. — Proceedings for appointment.
- § 34. — Persons who may be appointed.
- § 35. — Appointment and qualification.
- § 36. — Operation and effect of appointment in general.
- § 37. — Resignation and discharge.
- § 38. — Disqualification and removal.
- § 38½. — Death of guardian.
- § 39. — Appointment of successor.
- § 40. Authority of guardian or committee in general.
- § 41. Compensation of guardian or committee.
- § 42. Accounting by guardian or committee.
- § 43. Foreign and ancillary guardianship.
- § 44. Death of person under guardianship.
- § 45. Liabilities on guardianship bonds.

**IV. Custody and Support.**

- § 46. Power to control and regulate.
- § 47. Constitutional and statutory provisions.
- § 48. Jurisdiction of courts.
- § 49. Commitment to asylum.
- § 50. Restraint and treatment in asylum.
- § 51. Discharge from asylum.
- § 52. Compensation for support in asylum.
- § 53. Duties and liabilities of relatives.
- § 54. Powers and duties of guardian or committee of person.
- § 55. Liabilities of public authorities.
- § 56. Indigent insane.
- § 57. Indigent insane convicts.
- § 58. Proceedings to enforce liability for support.

**V. Property and Conveyances.**

- § 59. Capacity to take and hold property.
- § 60. Capacity to convey.
- § 61. Validity of conveyances.
- § 62. Claims against estate in general.
- § 63. Liability of estate for support.
- § 64. Allowances to family.
- § 65. Powers and duties of guardian or committee of estate.
- § 66. Ratification or avoidance of conveyances or other transactions in general.
- § 67. Ratification or avoidance of conveyances or other transactions after restoration to sanity.
- § 68. Jurisdiction of courts.
- § 69. — In equity.
- § 70. — Under statutory provisions.
- § 71. Sale, mortgage, or lease under order of court.

**VI. Contracts.**

- § 72. Capacity to contract.
- § 73. Validity in general.
- § 74. Services.
- § 75. Necessaries.
- § 76. Loans and advances.
- § 77. Bills and notes.
- § 78. Consent or affirmance by guardian or committee.
- § 79. Avoidance after restoration to sanity.

**VII. Torts.**

- § 80. Liability in general.
- § 81. Insanity at time of trial.
- § 82. Damages.

**VIII. Crimes.**

- § 83. Responsibility in general.
- § 84. Insanity at time of trial.
- § 85. Punishment.
- § 86. Confinement and support of insane criminals.

**IX. Actions.**

- § 87. Capacity to sue and be sued in general.
- § 88. Statutory provisions.
- § 89. Rights of action.
- § 90. Leave to sue.
- § 91. Jurisdiction and powers of courts.
- § 92. Parties.
- § 93. Authority, rights, and duties of general guardian or committee.
- § 94. Guardian ad litem or next friend.
- § 94½. Restoration to sanity pending action.
- § 95. Process.
- § 96. Appearance and representation by attorney.
- § 97. Pleading.
- § 98. Evidence.
- § 99. Trial.
- § 100. Judgment.
- § 101. Execution and enforcement of judgment.
- § 102. Review.
- § 103. Costs.

*Cross-References.*

- |   |   |
|---|---|
| <p>Acceptance of conveyance, see "Deeds," § 194.</p> <p>Acceptance of gift, see "Gifts," § 24.</p> <p>Acquisition of legal settlement, see "Paupers," § 19.</p> <p>Allegation as to mental condition of accused in indictment for homicide, see "Homicide," § 127.</p> <p>Application for patent by guardian, see "Patents," § 78.</p> <p>Burden of proof of capacity to commit crime, see "Criminal Law," § 380.</p> | <p>Commitment of insane person as deprivation of liberty without due process of law, see "Constitutional Law," § 255.</p> <p>Commitment of person acquitted by jury on ground of insanity, as denial of due process of law, see "Constitutional Law," § 270.</p> <p>Compensation of sheriff for transporting insane person to asylum, see "Sheriffs and Constables," § 41.</p> <p>Competency as witnesses, see "Witnesses," § 41.</p> |
|---|---|

- Competency of juror as witness on criminal trial of person committed, see "Witnesses," § 73.
- Competency of witnesses to testify as experts on question of mental capacity, see "Evidence," § 537.
- Confessions as evidence of sanity, see "Criminal Law," §§ 517, 518.
- Confinement in asylum without warrant as false imprisonment, see "False Imprisonment," § 5.
- Consent by devisee to execute sale as binding insane codevisee, see "Wills," § 847.
- Conservator as constructive trustee of incompetent, see "Trusts," § 102.
- Contributory negligence, see "Negligence," § 87.
- Criminal responsibility of guardian for embezzlement, see "Embezzlement," § 44.
- Discharge of jury for insanity of juror as former jeopardy, see "Criminal Law," §§ 183, 184.
- Domicile of insane person, see "Domicile," § 5.
- Duties and liabilities of examining physicians, see "Physicians and Surgeons," § 19.
- Duty of carrier to transport lunatic, see "Carriers," § 236.
- Election by insane widow between child's share and other provisions, see "Descent and Distribution," § 65.
- Election to take or renounce provisions of will, see "Wills," § 786.
- Embezzlement of funds of, see "Embezzlement," § 9.
- Evidence as to how idiot voted at election, see "Elections," § 293.
- Evidence explanatory of evidence of insanity, see "Criminal Law," § 361.
- Evidence in criminal prosecution, records of hospital, see "Criminal Law," §§ 429, 444.
- Evidence in criminal prosecutions, materiality, see "Criminal Law," § 384.
- Evidence in habeas corpus proceedings, see "Habeas Corpus," § 85.
- Evidence of absent witness to show insanity as ground for continuance, see "Criminal Law," §§ 595-597.
- Evidence of insanity, self-serving declarations, see "Criminal Law," § 413.
- Evidence of similar facts and transactions, see "Evidence," § 132.
- Evidence to sustain issue of mental capacity on motion for new trial, see "Criminal Law," § 956.
- Guardianship as affecting testamentary capacity, see "Wills," § 35.
- Harmless error in reception of evidence as to insanity, see "Criminal Law," § 1168.
- Hearsay evidence as to insanity, see "Criminal Law," § 421; "Evidence," §§ 317, 322.
- Homestead as affected by confinement in asylum, see "Homestead," §§ 149, 154.
- Imputation to insane person of contributory negligence of keeper or custodian, see "Negligence," § 89.
- Incapacity of accused and others as ground for continuance, see "Criminal Law," § 589.
- Inducing mentally weak person to trade his property as tort, see "Torts," § 11.
- Insane asylums, see "Asylums."
- Insane paupers, see "Paupers," § 47.
- Insanity affecting right to adopt child, see "Adoption," § 4.
- Insanity after conviction, see "Criminal Law," § 981.
- Insanity as affecting capacity to commit acts of bankruptcy, see "Bankruptcy," § 56.
- Insanity as affecting computation of statutory period of desertion, see "Divorce," § 37.
- Insanity as affecting limitation of actions, see "Limitation of Actions," § 74.
- Insanity as defense in criminal prosecutions, see "Criminal Law," §§ 48-51, 331, 354, 570, 740, 773, 782; "Homicide," §§ 27, 94, 179, 237, 270, 294; "Larceny," § 3.
- Insanity as defense to action for divorce, see "Divorce," § 43.
- Insanity as dissolution of community, see "Husband and Wife," § 272.
- Insanity as ground for arrest of judgment, see "Criminal Law," § 973.
- Insanity as ground for vacation of judgment, see "Judgment," § 371.
- Insanity as interruption of acquisition of legal settlement, see "Paupers," § 19.
- Insanity as terminating employment of attorney, see "Attorney and Client," § 76.
- Insanity of conspirator as affecting liability of co-conspirators, see "Conspiracy," § 11.
- Insanity of debtor as affecting jurisdiction of bankruptcy court, see "Bankruptcy," § 13.
- Insanity of debtor as bar to his discharge in bankruptcy, see "Bankruptcy," § 407.
- Insanity of employer as affecting contract of employment, see "Master and Servant," § 25.
- Insanity of husband as affecting competency of wife as witness, see "Witnesses," § 62.
- Insanity of incumbent of office, see "Officers," § 55.
- Insanity of mortgagor as suspending power of sale under mortgage, see "Mortgages," § 334.
- Insanity of sheriff as affecting right to act as tax collector, see "Taxation," § 547.
- Insanity of widow as affecting question as to whether she took a homestead or dower interest, see "Dower," § 59.
- Insanity of wife as affecting power of husband to devise community property, see "Wills," § 6.
- Insanity of witness as affecting credibility, see "Witnesses," § 327.
- Jurisdiction of probate courts in general over estates of incompetent persons, see "Courts," § 199.
- Liability of estate of deceased lunatic for services in caring for him, see "Executors and Administrators," § 205.
- Loss of services as element of damage for injuries to person of unsound mind, see "Damages," § 37.
- Mandamus to compel sheriff to receive insane person, see "Mandamus," § 73.
- Mental capacity as affecting confession of accused, see "Criminal Law," §§ 525, 526.

Mental capacity as affecting time for service of notice of injuries from defects in street, see "Municipal Corporations," § 812.  
 Mental capacity as affecting validity of bid at execution sale, see "Execution," § 238.  
 Mental capacity of persons not adjudged insane, see "Bills and Notes," § 101; "Contracts," § 92.  
 Mental capacity to consent as element of rape, see "Rape," § 12.  
 Mental capacity to create trust, see "Trusts," § 46.  
 Mental capacity to make deed, see "Deeds," § 68.  
 Mental capacity to make gift, see "Gifts," § 49.  
 Mental capacity to marry, see "Marriage," § 7.  
 Mental capacity to partition property, see "Partition," § 3.  
 Mode of assessment of property of insane person, see "Taxation," § 362.  
 Newly discovered evidence of insanity as ground for new trial, see "Criminal Law," §§ 938-940, 945.  
 Opinion evidence as to mental capacity, see "Criminal Law," §§ 456, 464, 465, 474, 478-481, 483-490, 493; "Evidence," §§ 471, 472, 478, 501, 510, 568, 571.  
 Opinion evidence as to physical condition as affecting mental condition, see "Criminal Law," § 455.  
 Payment of distributive share of lunatic in decedent's estate, see "Executors and Administrators," § 304.  
 Persons liable for unlawful imprisonment of person alleged to be insane, see "False Imprisonment," § 15.  
 Plea of insanity, see "Criminal Law," § 286.  
 Prejudice against defense of insanity as disqualification of juror, see "Jury," § 106.  
 Presumption as to acts of sheriffs in custody of alleged lunatic, see "Evidence," § 83.  
 Presumption as to character of services rendered to decedent while insane, see "Executors and Administrators," § 221.  
 Presumption as to sanity in criminal prosecutions, see "Criminal Law," § 311.

Presumptions as to sanity in civil actions, see "Evidence," § 63.  
 Privity of insane person and guardian as affecting conclusiveness of judgment, see "Judgment," § 692.  
 Proceedings by husband or wife to sell property of insane spouse as denial of due process of law, see "Constitutional Law," § 806.  
 Purchase of liquor, see "Intoxicating Liquors," § 327.  
 Right of guardian of insane person to appointment as administrator of estate of ward's relative, see "Executors and Administrators," § 17.  
 Right of person of unsound mind to recover for mental suffering, see "Damages," § 48.  
 Right to attach property of insane person in hands of guardian, see "Attachment," § 64.  
 Right to redeem from tax sale, see "Taxation," § 697.  
 Sale of liquor to insane person as against public policy, see "Sales," § 48.  
 Separate trial of issue of insanity of accused, see "Criminal Law," § 623.  
 Statutes making insane persons liable for necessities as class legislation, see "Constitutional Law," § 208.  
 Statutes prohibiting discharge from hospital except by act of General Assembly as interfering with judiciary, see "Constitutional Law," § 52.  
 Statutes providing that admission to asylum shall depend on certificate of physicians as encroachment on judiciary, see "Constitutional Law," § 55.  
 Suicide of person insured while insane, cause of death within policy, see "Insurance," § 446.  
 Testamentary capacity, see "Wills," §§ 34-44.  
 Testimony as to transactions with persons subsequently incompetent, see "Witnesses," §§ 125-183.  
 Testimony as to transactions with deceased guardian, see "Witnesses," § 133.  
 Trespass on land of insane person, see "Trespass," § 25.

## I. DISABILITIES IN GENERAL.

### Cross-References.

Capacity to sue or be sued, see post, § 87.  
 Capacity to marry, see "Marriage," § 7.  
 Competency as witnesses, see "Witnesses," § 41.  
 Commission of acts of bankruptcy, see "Bankruptcy," § 56.  
 Insanity of incumbent of office, see "Officers," § 55.  
 Insanity of referee as ground for setting aside judgment based on his report, see "Judgment," § 346.  
 To act as tax collector, see "Taxation," § 547.

### § 1. Who are incompetent.

#### Annotation.

Morphinism and other addictions as af-

fecting responsibility and capacity.—39 L. R. A. 262, note.

What are insane delusions.—37 L. R. A. 261, note.

(a) The term "non compos mentis," in Code 1860, art. 16, § 79, giving power to the courts to superintend and direct the affairs of persons non compos mentis, embraces, not only lunatics and idiots, but all persons of unsound mind.—*Greenwade v. Greenwade*, 43 Md. 313. (See Code 1911, art. 16, § 114.)

### § 2. Evidence of incompetency.

#### Annotation.

Evidence of specific instances to prove insanity of fellow servant.—14 L. R. A. (N. S.) 773, note.



(a) Evidence held insufficient to sustain a finding of insanity on inquisition.—*In re Bristor's Estate*, 115 Md. 614, 81 Atl. 25.

(b) If the proof in a suit to annul a deed made by a person alleged to have been insane at the time only shows a case of insanity directly connected with some violent disease, the party alleging the insanity must bring his proof of continued insanity to that point of time which bears directly upon the contract impeached.—*Turner v. Rusk*, 53 Md. 65. [Cited and annotated in 35 L. R. A. 119, 120, on presumption of continuance of insanity; in 37 L. R. A. 262, on what are insane delusions.]

(c) Every person is presumed to be sane until the contrary appears.—*Brown v. Ward*, 53 Md. 376, 36 Am. Rep. 422. [Cited and annotated in 16 L. R. A. 678, on effect of belief in spiritualism, witchcraft, etc., on capacity to make will or deed; in 17 L. R. A. 494, on burden of proving testamentary capacity; in 36 L. R. A. 724, on presumption and burden of proof as to sanity; in 37 L. R. A. 270, on what are insane delusions; in 15 L. R. A. (N. S.) 674, on testamentary capacity of one believing in spiritualism.]

(d) The court cannot say, as a matter of law, that a person is insane because he holds the belief that he can communicate with spirits, and can be, and is, advised and directed by them in his business transactions and in the disposal of his property.—*Brown v. Ward*, 53 Md. 376, 36 Am. Rep. 422. [Cited and annotated, see supra.]

(e) The legal presumption of insanity does not arise from an act of suicide.—*Knickerbocker Life Ins. Co. of New York v. Peters*, 42 Md. 414. [Cited and annotated in 17 L. R. A. 90, on effect of provision avoiding policy for suicide, "sane or insane"; in 35 L. R. A. 259, 261, 264, on effect of insanity on suicide condition in policy; in 36 L. R. A. 741, on presumption and burden of proof as to sanity.]

(f) A witness familiar with the grantor in a deed for a long time, both before and after its execution, may, after testifying to the grantor's state of mind before its execution, be further examined as to acts of insanity subsequent to that period.—*Jerry v. Townshend*, 9 Md. 145. [Cited and annotated in 36 L. R. A. 64, on witness's right to give opinion as to sanity or mental capacity; in 39 L. R. A. 810, on expert opinions as to sanity or insanity.]

(g) The declarations of a party to an instrument made subsequent to its execution are not admissible to prove his insanity, because they may as well have been the fruits of a well-conceived deceit of a vacant mind.—*Stewart v. Redditt*, 8 Md. 67. [Cited and annotated in 19 L. R. A. 752, on declarations as part of res gestæ; in 35 L. R. A. 120, on presumption of continuance of insanity; in 38 L. R. A. 721, 737, 739, on nonexpert opinions as to sanity or insanity.]

(h) The maxim, "Once insane, always insane," is not universally applicable.—*Townshend v. Townshend*, 7 Gill 10. [Cited and annotated in 17 L. R. A. 497, on burden of proving testamentary capacity; in 35 L. R. A. 120, on presumption of continuance of insanity; in 36 L. R. A. 69, on witness's right to give opinion as to sanity or mental capacity; in 37 L. R. A. 263, on what are insane delusions; in 38 L. R. A. 721, 722, 727, 732, 738, on nonexpert opinions as to sanity or insanity; in 27 L. R. A. (N. S.) 77, on what is testamentary capacity.] *Stewart v. Redditt*, 8 Md. 67. [Cited and annotated, see supra.]

### § 3. Constitutional and statutory provisions.

#### Cross-References.

See ante, § 1.

Subject and title of act relating to alienation of homestead when one spouse is insane, see "Statutes," § 115.

#### Annotation.

See Code, art. 16, §§ 114-123, 146; art. 45, § 13; art. 59, §§ 1, et seq.; act 1916, c. 566, p. 1162; c. 699, p. 1630.

(a) Under Code 1888, art. 45, § 2, providing that when the husband has been, upon inquisition, found insane, and the finding remains unreversed and in force, the wife may convey her property as if she were a feme sole, by deed absolute or mortgage, she may so convey her property where the husband's insanity has been ascertained by the special verdict of a jury in a criminal case.—*Hadaway v. Smith*, 71 Md. 319, 18 Atl. 589. (See Code 1911, art. 45, § 13.)

### § 4. Status in general.

### § 5. Capacity to appoint agent or trustee.

(a) One adjudged a lunatic has no capacity during the continuance of the lunacy to contract, and may not appoint an agent.—*Gillet v. Shaw*, 117 Md. 508, 83 Atl. 394.

## § 6. Estoppel to allege incompetency.

### Cross-References.

Estoppel of guardian to deny insanity of ward, see "Estoppel," § 64.

## II. INQUISITIONS.

### Cross-References.

Proceedings for commitment to asylum, see post, § 49.

Decisions of state courts as to construction of statutes providing for inquisitions of lunacy in criminal cases as authority in federal courts, see "Courts," § 366.

Denial of due process of law, see "Constitutional Law," § 309.

Dismissal without prejudice, see "Dismissal and Nonsuit," § 2½.

Duties and liabilities of examining physicians, see "Physicians and Surgeons," § 19.

Privileged communications, see "Libel and Slander," § 38.

Probable cause for institution of proceedings, see "Malicious Prosecution," § 25.

Proceedings in case of person accused of crime, see "Criminal Law," §§ 623-625.

## § 7. Nature and grounds of proceedings.

(a) The granting of a writ of inquiry is to a certain extent discretionary with the chancellor, and may be dispensed with for the benefit of the alleged lunatic.—*In re Owings*, 1 Bland 290, 17 Am. Dec. 311. [Cited and annotated in 64 L. R. A. 524, 526, on insane person's right to sue by next friend.]

## § 8. Jurisdiction.

### Cross-References.

Appellate jurisdiction, see "Courts," § 219. Of proceedings where persons are under indictment or conviction by another court, see "Courts," § 477.

## § 9. Venue.

## § 10. Parties.

(a) A proceeding to have an adjudication in lunacy may properly be commenced by one not a member of the family of the alleged lunatic.—*Gerke v. Colonial Trust Co.*, 117 Md. 579, 83 Atl. 1092; *Same v. Wilson*, Id.

## § 11. Death of party pending proceedings.

## § 12. Form and requisites of application.

(a) A writ de lunatico inquirendo may be issued on a petition therefor, and a certificate that the subject of it is of unsound mind.—*In re Boarman*, 2 Bland 89.

## § 13. Notice.

### Cross-References.

Of proceedings for commitment to asylum, see post, § 49.

Want or insufficiency of notice as deprivation of liberty or property without due process of law, see "Constitutional Law," § 309.

### Annotation.

Necessity and sufficiency of notice to the alleged lunatic.—23 L. R. A. 737; 26 L. R. A. (N. S.) 232, notes.

(a) In the execution of a writ de lunatico inquirendo the person alleged to be non compos must have reasonable notice of the proceedings and opportunity to contest, except in cases of dangerous madness, and must be produced before the jury unless he is out of the state or bringing him before the jury would greatly inconvenience or injure him.—*Supreme Council of Royal Arcanum v. Nicholson*, 104 Md. 472, 65 Atl. 320. [Cited and annotated in 26 L. R. A. (N. S.) 233, on necessity and sufficiency of notice of lunacy proceeding to allege lunatic.]

## §§ 14-17. (See Analysis.)

## § 18. Submission to jury.

(a) In proceedings on a commission of lunacy, under Code 1860, art. 16, § 79, giving power to the courts to superintend the affairs of persons non compos mentis, the question of the existence of unsoundness of mind giving the courts jurisdiction is a question of fact depending on the proof.—*Greenwade v. Greenwade*, 43 Md. 313. (See Code 1911, art. 16, § 114.)

## § 19. Conduct of hearing or trial in general.

(a) An inquisition as to insanity may be conducted by a sheriff's deputy.—*In re Bristor's Estate*, 115 Md. 614, 81 Atl. 25.

## §§ 20-24. (See Analysis.)

## § 25. Traversing and setting aside inquisition.

(a) Allegations, in a petition to set aside an inquisition, return, and order of confirmation, that the alleged lunatic had no notice of the time and place of the inquisition and did not appear before the jury, being admitted by a demurrer, the inquisition, return, and order of confirmation should be set aside and a new jury summoned and a new inquisition taken.—*Supreme Council of*

*Royal Arcanum v. Nicholson*, 104 Md. 472, 65 Atl. 320. [Cited and annotated in 26 L. R. A. (N. S.) 233, on necessity and sufficiency of notice of lunacy proceeding to alleged lunatic.]

(b) The court in proceedings de lunatico inquirendo has power to set aside an inquisition, return, and order of confirmation, although the order of confirmation has been enrolled before the petition to set aside is filed.—*Supreme Council of Royal Arcanum v. Nicholson*, 104 Md. 472, 65 Atl. 320. [Cited and annotated, see supra.]

### § 26. Conclusiveness of adjudication.

#### Cross-References.

As evidence in criminal prosecution, see "Criminal Law," § 429.  
As evidence of insanity in criminal prosecution, see "Criminal Law," § 570.  
As evidence on question of probable cause, see "Malicious Prosecution," § 25.  
In proceedings to vacate judgment on ground of insanity of referee, see "Judgment," § 393.

(a) Proceedings in which one was adjudged a lunatic may not be collaterally attacked by purchasers of her property at a sale under order of the court on exceptions to the sale, on the ground she was not summoned before the jury, nor notified of such proceedings, nor appeared before the jury, either in person or by solicitor, etc.—*Packard v. Ulrich*, 106 Md. 246, 67 Atl. 246.

### § 27. Review.

#### Cross-References.

Appellate jurisdiction of suit in involving construction of statute providing for inquisitions, see "Courts," § 219.  
Right to certiorari as dependent on absence of remedy by appeal, see "Certiorari," § 5.

(a) Under Code 1904, art. 16, § 107, giving the Chancery Court authority to direct the affairs of insane persons, and under art. 5, § 26, permitting appeals from orders in the nature of a final decree passed by a court of equity, appeal would lie from an order confirming a finding on an inquisition of lunacy.—*In re Bristol's Estate*, 115 Md. 614, 81 Atl. 25. (See Code 1911, art. 5, § 26; art. 16, § 114.)

(b) The finding of the jury in an inquisition as to insanity is not conclusive on appeal, though they had opportunity to observe the appearance and demeanor of the alleged

insane during a protracted hearing and while she was testifying.—*In re Bristol's Estate*, 115 Md. 614, 81 Atl. 25.

### § 28. Costs and fees.

#### Cross-References.

Compensation of jurors, see "Jury," § 77.  
On inquiry of insanity of persons accused of crime, see "Costs," § 292.

### § 29. Restoration to sanity.

#### Cross-References.

Avoidance of conveyance or contracts, see post, § 67.  
Effect on pending action, see post, § 94½.  
Validity of subsequent conveyance, see post, § 61.  
Mandamus to compel adjudication, see "Mandamus," § 4.

## III. GUARDIANSHIP.

#### Cross-References.

Authority, rights, and duties of guardian or committee as to actions, see post, § 93.  
Powers and duties of guardian or committee as to property, see post, § 65.  
Act violating right to acquire and possess property, see "Constitutional Law," § 87.  
Application for patent by guardian, see "Patents," § 78.  
Conservator as constructive trustee of incompetent, see "Trusts," § 102.  
Costs of proceedings for appointment of guardian for married man as community debt, see "Husband and Wife," § 268.  
Criminal responsibility of guardian for embezzlement, see "Embezzlement," § 44.  
Effect on testamentary capacity, see "Wills," § 35.  
Estoppel of guardian to deny insanity of ward, see "Estoppel," § 64.  
Jurisdiction of probate courts in general, see "Courts," § 199.

### § 30. Nature and grounds.

(a) Under the rule that, for the assumption of continued maintenance of control by a court of equity over the person and estate of one alleged to be of unsound mind, it is not necessary to prove the entire absence of reason, understanding, or memory, but only to show incapacity to contract, evidence held sufficient to sustain an order dismissing a petition for the discharge of the committee of the person and estate of a person of unsound mind.—*Johnson v. Safe Deposit & Trust Co.*, 104 Md. 460, 65 Atl. 338.

### § 30½. Public administrator and guardian.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 31. Appointment, qualification, and tenure of guardian or committee.**

**§ 32.— Jurisdiction of courts.**

*Cross-References.*

Appellate jurisdiction, see "Courts," § 219.  
Of probate courts in general over estates of incompetent persons, see "Courts," § 199.

To enjoin proceedings for appointment in another court, see "Courts," § 480.

**§ 33.— Proceedings for appointment.**

(a) A guardian, committee, or trustee can be appointed for a lunatic only after an adjudication by a jury as to his mental unsoundness.—*Hamilton v. Traber*, 78 Md. 26, 27 Atl. 229, 44 Am. St. Rep. 258.

(b) The will of a lunatic, though made when he was compos mentis, and though he may have not have been restored to mental capacity to revoke it, can have no influence on the court in the appointment of his committee of lunacy.—*In re Colvin*, 3 Md. Ch. 278.

(c) The power to appoint a committee for a lunatic is a discretionary one, and its exercise by the chancellor is not reviewable, whether he regards the wishes of those interested in the lunatic's estate or not.—*In re Colvin*, 3 Md. Ch. 278.

**§ 34.— Persons who may be appointed.**

(a) It is a presumption in law that lunatics will be treated with more affection by the nearest of kin than by strangers; and thus consanguinity, though conferring no title, is considered a recommendation in choosing a committee, and strong ground must be shown before it will be disregarded.—*In re Colvin*, 3 Md. Ch. 278.

(b) Though the committee is usually appointed on the nomination of him who sues out the commission of lunacy, yet a caveat may be entered against such an appointment; and, if this be done, the recommendations of parties interested will be considered, and proof taken, to aid the court in the selection; and, other things being equal, the rule is to appoint him who is recommended by the greatest number of those entitled to be heard.—*In re Colvin*, 3 Md. Ch. 278.

**§ 35.— Appointment and qualifications.**

**§ 36.— Operation and effect of appointment in general.**

*Cross-Reference.*

Substitution of committee in action commenced previous to appointment, see post, § 98.

(a) Where the petition prays for the appointment of a committee of a lunatic's "person and estate," but the decree only appoints a committee of the estate, it cannot be assumed that the court also intended to appoint a committee of the "person."—*Rutledge v. Rutledge*, 118 Md. 552, 85 Atl. 661.

**§ 37.— Resignation and discharge.**

**§ 38.— Disqualification and removal.**

(a) A committee of the person and estate of a lunatic gave a good bond for the faithful performance of his trust, and afterwards became insolvent. *Held*, that insolvency alone was not sufficient cause for his removal, but he was ordered to give additional security.—*In re Chew's Estate*, 4 Md. Ch. 60.

(b) It is good cause for removing the trustee or committee of a lunatic that he is not a resident of the state.—*In re Morgan*, 3 Bland 332.

(c) Where two or more persons are appointed a joint committee of a lunatic, their trust ceases on the death of any one of them.—*In re Boorman*, 2 Bland 89.

**§§ 38½, 39.— (See Analysis.)**

**§ 40. Authority of guardian or committee in general.**

*Cross-Reference.*

Right of guardian to appointment as administrator of estate of ward's relative, see "Executors and Administrators," § 17.

*Annotation.*

Right of guardian of mentally incompetent person to maintain action for damages against one to whom ward has transferred property.—34 L. R. A. (N. S.) 1058, note.

Power of guardian or committee to bind incompetent person or his estate by contract.—8 L. R. A. (N. S.) 436, note.

Right of guardian to remove incompetent from state.—58 L. R. A. 931, note.

**§ 41. Compensation of guardian or committee.**

*Cross-Reference.*

See post, § 62.

## § 42. Accounting by guardian or committee.

### Cross-References.

As evidence of defects in lists given to tax assessor, see "Taxation," § 334.

Limitations, see "Limitation of Actions," § 104.

(a) Counsel fees for services rendered a committee in defending and protecting the estate of a lunatic are proper allowances against the estate, and, when such fees have been regularly allowed by the court, the allowance is at least prima facie evidence that they were proper charges.—*Bradford v. McKenzie*, 89 Md. 763, 43 Atl. 923.

(b) A committee of a lunatic may be appointed to take charge of him and his estate without an account, on the condition of their maintaining him, returning an inventory, etc.—*In re Boarman*, 2 Bland 89.

## § 43. Foreign and ancillary guardianship.

(a) Under Code 1904, art. 16, §§ 231, 232, payment of a small sum due a lunatic as annuities to a foreign guardian held within the policy of the state of Maryland.—*Gerke v. Colonial Trust Co.*, 117 Md. 579, 83 Atl. 1092; *Same v. Wilson*, Id. (See Code 1911, art. 16, §§ 247, 248.)

(b) That a foreign guardian was secretary of an insane hospital held not sufficient to render an order improper, where there was no showing that he was not a proper guardian.—*Gerke v. Colonial Trust Co.*, 117 Md. 579, 83 Atl. 1092; *Same v. Wilson*, Id.

## § 44. Death of person under guardianship.

(a) The death of a lunatic determines the office of a committee.—*Cain v. Warford*, 3 Md. 454.

(b) The office of the committee is determined by the death of the lunatic, and the only power retained by the court over the committee as such is to compel him to account and deliver possession of the property as the court shall direct; but the committee is to retain and preserve the property until some person shall appear properly authorized to receive it from him, and, if there is danger of delay in ascertaining who are en-

titled to possession, a receiver may be appointed on application of parties in interest.—*In re Colvin*, 3 Md. Ch. 278.

(c) On the death of a lunatic committed to a committee, the court can only deliver itself of the property of the lunatic, and cannot dispose of and distribute it among those entitled thereto as his distributees, creditors, etc.—*In re Boarman*, 2 Bland 89.

## § 45. Liabilities on guardianship bonds.

### Cross-References.

Assumpsit on bond, see "Assumpsit, Action of," § 6.

Limitations applicable, see "Limitation of Actions," § 34.

(a) A decretal order for the removal of the committee of a lunatic, requiring him to pay into court a certain sum, is prima facie binding on the sureties on the committee's bond, and they can relieve themselves from its effect only by showing that the amount recovered was in excess of the proper amount, or that there should have been no recovery at all.—*Grafflin v. State*, 103 Md. 171, 63 Atl. 373.

(b) Where a court authorized the committee of a lunatic to invest a certain sum of the lunatic's money on first mortgage security, and he made an investment on second mortgage security, a release of the first mortgage after an order requiring the committee to pay the amount of the investment into court did not render the order erroneous when passed, and was not a defense to an action on the committee's bond, though it might have been ground for modification of the order on proper proceedings therefor.—*Grafflin v. State*, 103 Md. 171, 63 Atl. 373.

(c) That an order removing the committee of a lunatic, and requiring him to pay a certain sum into court was not final and appealable, does not show that it was incorrect, so as to affect the liability of the sureties on the committee's bond.—*Grafflin v. State*, 103 Md. 171, 63 Atl. 373.

(d) In an action on the bond of the committee of a lunatic, the offer of the sureties to bring into court the amount of money involved in the controversy interposes no obstacle to the prosecution of the suit.—*Grafflin v. State*, 103 Md. 171, 63 Atl. 373.

(e) That a suit on the bond of the committee of a lunatic was instituted without obtaining leave of court does not affect the right of the plaintiff to recover.—*Grafflin v. State*, 103 Md. 171, 63 Atl. 373.

(f) In an action on the bond of the committee of a lunatic, the petition of the lunatic by his next friend, the answer of the committee thereto, and the decree thereon removing the committee, and requiring him to pay a certain sum into court, were admissible in evidence.—*Grafflin v. State*, 103 Md. 171, 63 Atl. 373.

(g) In an action on the bond of the committee of a lunatic, the admission in evidence of an auditor's report, showing the amounts which went into the committee's hands from the sale of certain securities of the lunatic, was not error, where the sum for which judgment was rendered was conceded to be in the committee's possession, for which he ought to account.—*Grafflin v. State*, 103 Md. 171, 63 Atl. 373.

#### IV. CUSTODY AND SUPPORT.

##### Cross-References.

Confinement and support of insane criminals or persons acquitted on ground of insanity, see post, § 86.

Liability of estate for support, see post, § 63.

Acquisition of legal settlement, see "Paupers," § 19.

Domicile of insane person, see "Domicile," § 5.

Duty of state to support infant idiots, see "Paupers," § 3.

Habeas corpus, see "Habeas Corpus," §§ 17, 38, 85, 100.

Insane asylums, see "Asylums."

Insanity as interruption of acquisition of legal settlement, see "Paupers," § 19.

Laws making insane persons liable for necessities as class legislation, see "Constitutional Law," § 208.

Liability for unlawful imprisonment of person alleged to be insane, see "False Imprisonment," § 15.

Mandamus to compel sheriff to receive insane person, see "Mandamus," § 73.

Presumption as to acts of sheriffs in custody of alleged lunatic, see "Evidence," § 83.

#### § 46. Power to control and regulate.

#### § 47. Constitutional and statutory provisions.

##### Cross-References.

Commitment of insane person as deprivation of liberty without due process of law, see "Constitutional Law," § 255.

Commitment of person acquitted by jury on ground of insanity as denial of due process of law, see "Constitutional Law," § 270.

Effect of partial invalidity of statute, see "Statutes," § 64.

Statutes prohibiting discharge from hospital except by act of General Assembly as interfering with judiciary, see "Constitutional Law," § 52.

Subject and title of act, see "Statutes," § 117.

##### Annotation.

Validity of statute for commitment of inebriates to public or private institutions.—17 L. R. A. (N. S.) 984, note.

#### § 48. Jurisdiction of courts.

##### Cross-Reference.

Federal courts, see "Courts," § 260.

#### § 49. Commitment to asylum.

##### Cross-References.

Compensation of sheriff for transporting insane person to asylum, see "Sheriffs and Constables," § 41.

Deprivation of liberty without due process of law, see "Constitutional Law," § 255.

Statute providing that admission shall depend on certificate of physicians as encroachment on judiciary, see "Constitutional Law," § 55.

#### § 50. Restraint and treatment in asylum.

##### Cross-References.

See "Hospitals," §§ 7, 8.

Confinement in asylum without warrant as false imprisonment, see "False Imprisonment," § 5.

(a) In the case of simple dotage, the party need not be restrained of her liberty; but, if necessary, a receiver will be appointed to take the rents and profits of the estate in controversy pending litigation.—*In re Owning*, 1 Bland 370, 17 Am. Dec. 811. [Cited and annotated in 64 L. R. A. 523, 530, on insane person's right to sue by next friend.]

#### § 51. Discharge from asylum.

##### Cross-References.

Habeas corpus to procure discharge, evidence, see "Habeas Corpus," § 85.

Statutes prohibiting discharge from hospital except by act of General Assembly as interfering with judiciary, see "Constitutional Law," § 52.

#### §§ 52-55. (See Analysis.)

#### § 56. Indigent insane.

##### Cross-References.

Insane paupers, see "Paupers," § 47.

Vested right of one county to recover from another for maintenance of indigent insane persons, see "Constitutional Law," § 105.

§ 57. Indigent insane convicts.

§ 58. Proceedings to enforce liability for support.

*Cross-References.*

Limitations, see "Limitation of Actions," §§ 13, 34, 58, 95, 127.

Limitations as against state, see "Limitation of Actions," § 11.

What law governs as to limitation of actions, see "Limitation of Actions," § 2.

**V. PROPERTY AND CONVEYANCES.**

*Cross-References.*

Assessment of property, see "Taxation," § 362.

Attachment of property of insane person in hands of guardian, see "Attachment," § 64.

Capacity to execute deed, see "Deeds," §§ 196, 203, 211.

Consent by devisee to execution sale as binding on insane co-devisee, see "Wills," § 847.

Consent to sale by executor, see "Executors and Administrators," § 336.

Conversion of property of insane person, see "Trove and Conversion," § 5.

Creation of trust, see "Trusts," § 46.

Election by insane widow between child's share and other provision, see "Descent and Distribution," § 65.

Election to take or renounce provisions of will, see "Wills," § 786.

Inducing mentally weak person to trade his property as tort, see "Torts," § 11.

Insanity as dissolution of community, see "Husband and Wife," § 272.

Insanity of mortgagor as suspending power of sale under mortgage, see "Mortgages," § 334.

Insanity of widow as affecting question as to whether she took homestead or dower interest, see "Dower," § 59.

Insanity of wife as affecting power of husband to devise community property, see "Wills," § 6.

Interest on amount recovered by guardian from person who had converted property of insane person, see "Interest," § 44.

Inventions, see "Patents," § 78.

Joinder of guardian of insane wife in conveyance or mortgage of homestead, see "Homestead," § 118.

Payment of distributive share of lunatic in decedent's estate, see "Executors and Administrators," § 304.

Place of taxation, see "Taxation," § 270.

Presumption of acceptance of conveyance, see "Deeds," § 194.

Presumption of acceptance of gift, see "Gifts," § 24.

Proceedings by husband or wife to sell property of insane spouse as denial of due process of law, see "Constitutional Law," § 306.

Property transferred by lunatic as affected by lien of subsequent judgment, see "Judgment," § 779.

Purchase of liquor by insane person, see "Intoxicating Liquors," § 327.

Receivership, see "Receivers," § 17.

Redemption from tax sale, see "Taxation," § 697.

Sale of liquor to insane person as against public policy, see "Sales," § 48.

Sufficiency of evidence of mental capacity to make gift, see "Gifts," § 49.

Taxation of property of lunatic, double taxation, see "Taxation," § 47.

Testamentary capacity, see "Wills," §§ 34-44.

Trespass on land of insane person, see "Trespass," § 25.

Validity of bid at execution sale, see "Execution," § 238.

§ 59. Capacity to take and hold property.

§ 60. Capacity to convey.

*Cross-References.*

See post, § 61.

Mental capacity requisite to make deed, see "Deeds," § 68.

§ 61. Validity of conveyances.

*Cross-References.*

Acquiescence of heir apparent as estoppel, see "Estoppel," § 90.

Partition by act of parties, see "Partition," § 3.

*Annotation.*

Validity of deed made by an insane person.—19 L. R. A. 489, note.

(a) A deed in trust for the benefit of creditors, made by a lunatic, is only voidable, and not void.—*Riley v. Carter*, 76 Md. 581, 25 Atl. 667, 35 Am. St. Rep. 443, 10 L. R. A. 489. [Cited and annotated in 42 L. R. A. (N. S.) 343, on mortgage given by incompetent who had not been declared such.]

(b) A mortgage contained a power by which the mortgagee was authorized, on default by the mortgagor, to sell the property on 20 days' notice. A default occurred before proceedings were taken to make sale under the power, and all the preliminary requisites to making the sale were complied with. Held, that the subsequent lunacy of the mortgagor, and the proceedings had in reference thereto in equity, did not have the effect of suspending the execution of the power of sale by the mortgagee.—*Berry v. Skinner*, 30 Md. 567. [Cited and annotated in 70 L. R. A. 137, on power of sale in mortgage conferring interest preventing revocation by mortgagor's death.]

(c) A bill of sale of bank stock, with power of attorney for its transfer, executed by a lunatic, may be avoided by the lunatic in proceedings instituted for that purpose, and the bank held responsible for allowing the transfer to be made under such power.—*Chew v. Bank of Baltimore*, 14 Md. 299. [Cited and annotated in 45 L. R. A. (N. S.) 1076, 1080, 1082, on liability of corporation to true owner for unauthorized stock transfer.]

(d) An estate was devised to one in tail, and, if he died without heirs of his body, then to another in tail. The first tenant in tail conveyed the land in fee by deed of bargain and sale, and then died. Held, that the remainder-man could not impeach the deed upon the ground that, at the time of its execution, the bargainer was non compos mentis.—*Key's Lessee v. Davis*, 1 Md. 32. [Cited and annotated in 19 L. R. A. 489, 493, on validity of deed of insane person.]

## § 62. Claims against estate in general.

### Cross-Reference.

Claim against estate of deceased insane person for support, see "Executors and Administrators," § 206.

(a) Since a lunatic cannot contract after inquisition found, claims of creditors must exist before the inquisition, or may consist of liens on his property created before that time.—*Rutledge v. Rutledge*, 118 Md. 552, 85 Atl. 661.

(b) The committee of a lunatic should not be allowed for disbursements for stationery.—*In re Colvin's Estate*, 4 Md. Ch. 126.

(c) A fee paid for legal services rendered the committee of a lunatic in the discharge of his duty as such in the protection of the estate is a proper allowance against his estate.—*In re Colvin's Estate*, 4 Md. Ch. 126.

(d) Fees paid to counsel for conducting a controversy as to whether the lunacy of the lunatic commenced at an earlier date than the filing of the petition for the appointment of a committee cannot be allowed out of the estate.—*In re Colvin's Estate*, 4 Md. Ch. 126.

(e) Counsel fees paid by the committee of a lunatic in carrying on a controversy after the death of the lunatic in regard to the appointment of an administrator cannot be allowed out of the estate.—*In re Colvin's Estate*, 4 Md. Ch. 126.

## § 63. Liability of estate for support.

### Cross-Reference.

Liability of estate of deceased lunatic for services in caring for him, see "Executors and Administrators," § 205.

## § 64. Allowances to family.

## § 65. Powers and duties of guardian or committee of estate.

### Cross-Reference.

See ante, § 62.

(a) The court would not approve a contract whereby the trustees of a lunatic borrowed moneys which were to be repaid from the proceeds of a sale of the lunatic's real estate, the contract being made on the ground that a sale of such real estate at that time would be unadvisable, where at that time one of the trustees was indebted to the trust estate to the extent of \$4,000 and there was \$1,000 belonging to the lunatic in bank.—*Dulaney v. Devries*, 102 Md. 349, 62 Atl. 748.

## § 66. Ratification or avoidance of conveyances or other transactions in general.

(a) A lunatic, who has purchased merchandise, cannot escape liability for the price, where the contract of sale was fair, and was made by the seller in ignorance of the buyer's lunacy, and the seller cannot be placed in statu quo.—*Flach v. Gottschalk Co.*, 88 Md. 368, 41 Atl. 908, 42 L. R. A. 745, 71 Am. St. Rep. 418.

## § 67. Ratification or avoidance of conveyances or other transactions after restoration to sanity.

(a) A person of full age, who has been insane, may, after he has sufficiently recovered his reason to understand the character of his act, file a bill in equity to annul a deed or contract to his prejudice, made by him when he was of unsound mind and incapable of contracting.—*Turner v. Rusk*, 53 Md. 65. [Cited and annotated in 35 L. R. A. 119, 120, on presumption of continuance of insanity; in 37 L. R. A. 262, on what are insane delusions.]

## § 68. Jurisdiction of courts.

### § 69.— In equity.

(a) A Court of Chancery has no power to order the sale of a lunatic's property for his support, or to make a change of investment,



apart from that given by Code 1888, art. 16, §§ 96, 98, which require the application for such sale to be made by a guardian, committee, or trustee of the lunatic.—*Hamilton v. Traber*, 78 Md. 26, 27 Atl. 229, 44 Am. St. Rep. 258. (See Code 1911, art. 16, §§ 114, 116.)

### § 70.— Under statutory provisions.

#### Cross-Reference.

See ante, § 69.

(a) Under Code 1888, art. 16, §§ 100, 124, requiring, in case the trustee of a lunatic applies for permission to sell property for purpose of reinvestment, that a summons be served on such person, if a resident of the state, or, if a nonresident, that there be "proof of due publication of the order of publication," the sale is void if there is a mere service of the petition on the lunatic, a nonresident, by the order of a judge of a foreign state in which the lunatic is confined.—*Willis v. Hodson*, 79 Md. 327, 29 Atl. 604. (See Code 1911, art. 16, §§ 118, 146.)

(b) Although a court cannot dispose of the person or estate of a lunatic without his being first found to be a lunatic on an inquisition, yet the court may, in a proper case, extend its protection to the property of the lunatic before inquest.—*In re Owings*, 1 Bland 290. [Cited and annotated in 64 L. R. A. 524, 526, on insane person's right to sue by next friend.]

(c) Act 1785, c. 72, gives the chancellor power to superintend, etc., the affairs of lunatics, but does not expressly oust the courts of common law of their jurisdiction. *Held*, therefore, that the courts of common law have concurrent jurisdiction.—*Tomlinson v. Devore*, 1 Gill 345. (See Code 1911, art. 16, § 114.) [Cited and annotated in 32 L. R. A. 689, on admissions and waivers by fiduciaries in actions; in 39 L. R. A. 776, on insanity as affecting judgments.]

### § 71. Sale, mortgage, or lease under order of court.

#### Cross-References.

Right of purchaser to subrogation, see "Subrogation," § 16.

Sale under order of court as equitable conversion, see "Conversion," § 7.

(a) A creditor of a lunatic may collect his debt or enforce a lien on the lunatic's property only by an adversary proceeding under

Code, art. 15, § 118, providing that on application by the committee to sell the property, etc., the court shall take proof as in other chancery cases as to the value, etc., of the property, and order a sale if deemed to the lunatic's interest.—*Rutledge v. Rutledge*, 118 Md. 552, 85 Atl. 661.

(b) In view of Code, art. 16, § 121, authorizing a sale of a lunatic's property for such purposes "where a trustee had been appointed by the court for the management of the person and estate," the court may order a sale only where the application is by a trustee of the "person" and estate.—*Rutledge v. Rutledge*, 118 Md. 552, 85 Atl. 661.

(c) While the formal chancery proceedings prescribed by Code, art. 16, § 118, for the sale of a lunatic's realty or personalty, are not necessary when the sale is made pursuant to § 121 for the lunatic's support or the payment of expenses incurred by his committee, an application for the sale of realty for such purposes should at least show the object and necessity for the sale.—*Rutledge v. Rutledge*, 118 Md. 552, 85 Atl. 661.

(d) The language of the report of a sale of a lunatic's realty that "your committee believes the same to be for the interest and advantage of" the lunatic indicated that the purpose was for reinvestment, and not for support or payment of the committee's expenses.—*Rutledge v. Rutledge*, 118 Md. 552, 85 Atl. 661.

(e) Where a sale of a lunatic's realty was invalid, her devisee, if she retains the proceeds must do equity by giving the purchaser a valid deed, and, if the purchaser does not have the sale perfected, the proceeds, less reasonable compensation for use of the land and injury done it, should be returned to the purchaser.—*Rutledge v. Rutledge*, 118 Md. 552, 85 Atl. 661.

(f) A bill to set aside a decree ratifying a sale of complainant's interest in a firm, made while complainant was a lunatic, alleged fraud, setting up that in ascertaining the value of certain partnership realty it was appraised on the erroneous assumption that an ordinance for widening the street where it was situated would be repealed, whereby

the value of the property was lessened, and complainant failed to receive his share of the damages which were paid by the city when the street was opened. It was further alleged that the appraisal of the merchandise of the firm was made upon false statements rendered by complainant's partner, so as to cause the appraisal to be for less than one-half their value, and that no valuation was made for the good will of the firm, and that the proceedings on which the decree was based had been conducted through the influence which complainant's partner, who purchased at the sale, exercised over complainant's brother, who was his committee. The bill asked that the record in the former case be considered as a part of it, and from that it appeared that the appraisal of the real estate mentioned stated upon its face that it had been made on the assumption that the ordinance would be repealed; that the appraisal of the stock was made by persons thoroughly familiar therewith, who testified that it would be to the interest of the lunatic to consummate the sale; and that it was apparent that no allowance had been made for good will. *Held*, that, as the bill set up no matters not apparent from the record in the former case, and did not charge intentional fraud on the part of complainant's former partner, it was demurrable.—*Payne v. Payne*, 97 Md. 678, 55 Atl. 368.

(g) Code 1860, art. 16, § 83, providing that, in case of application to sell property of a lunatic, there shall be an appearance and answer by a guardian appointed by the court, and proof taken, does not apply when the petition is filed by the committee of the lunatic to pay necessary expenses.—*In re Dorney's Estate*, 59 Md. 67. (See Code 1911, art. 16, § 118.)

(h) Taxes on the property of a lunatic are such necessary expenses as will warrant the court to order a sale of the property for their payment, without the formalities required by Code 1860, art. 16, § 83, for the sale of the property of lunatics.—*In re Dorney's Estate*, 59 Md. 67. (See Code 1911, art. 16, § 118.)

(i) The court may order a runaway slave belonging to a lunatic to be sold, and the proceeds invested otherwise.—*In re Boarman*, 2 Bland 89; *In re Morgan*, 3 Bland 332.

## VI. CONTRACTS.

### Cross-References.

- Conclusiveness of adjudication of insanity, see ante, § 26.
- Evidence to show sanity at time of making contract and after adjudication of insanity, see ante, § 26.
- Adoption of child, see "Adoption," § 4.
- Mental capacity of persons not adjudged insane as affecting validity of contracts in general, see "Contracts," § 92.
- Mental capacity of persons not adjudged insane as affecting validity of note, see "Bills and Notes," § 101.
- Sale of liquor to insane person as against public policy, see "Sales," § 48.
- Validity of bid at execution sale, see "Execution," § 238.

### § 72. Capacity to contract.

#### Cross-Reference.

See post, § 73.

#### Annotation.

Capacity to make contract as affected by mental conditions.—3 L. R. A. (N. S.) 174, note.

### § 73. Validity in general.

#### Annotation.

Validity of contract executed after insanity in pursuance of an obligation assumed while sane.—14 L. R. A. (N. S.) 962, note.

(a) Lunatics and persons non compos mentis are not bound by their contracts, even though no fraud or imposition has been practiced upon them.—*Chew v. Bank of Baltimore*, 14 Md. 299.

### § 74. Services.

#### Cross-References.

- Insanity as terminating employment of attorney, see "Attorney and Client," § 76.
- Insanity of employer as affecting contract of employment, see "Master and Servant," § 25.
- Presumption as to the character of services rendered to decedent while insane, see "Executors and Administrators," § 221.

### §§ 75-79. (See Analysis.)

## VII. TORTS.

### Cross-References.

- Contributory negligence, see "Negligence," § 87.
- Imputation to insane person of contributory negligence of keeper or custodian, see "Negligence," § 89.
- Liability for slander dependent on mental capacity, see "Libel and Slander," § 71.
- Loss of services as element of damage for injuries to insane person, see "Damages," § 37.

## § 80. Liability in general.

### Annotation.

Civil liability of insane persons for torts or negligence.—26 L. R. A. 153; 42 L. R. A. (N. S.) 83, notes.

(a) One adjudged a lunatic is not liable in person or property for the tort of an employee of the guardian in operating an automobile not in the presence of the lunatic.—*Gillet v. Shaw*, 117 Md. 508, 83 Atl. 394, 42 L. R. A. (N. S.) 87.

(b) A lunatic or insane person is liable in a civil action for any tort he may commit, though he is not punishable criminally.—*Cross v. Kent*, 32 Md. 581. [Cited and annotated in 26 L. R. A. 153, on civil liability of insane person for torts or negligence.]

## § 81. Insanity at time of trial.

## § 82. Damages.

### Cross-Reference.

Right of person of unsound mind to recover for mental suffering, see "Damages," § 48.

## VIII. CRIMES.

### Cross-References.

Absence of evidence as to insanity as ground for continuance, see "Criminal Law," §§ 595-597.

Admissibility of confessions where plea is insanity, see "Criminal Law," § 517.

Allegation as to mental condition of accused in indictment for homicide, see "Homicide," § 127.

Burden of proof of incapacity to commit crime, see "Criminal Law," § 330.

Competency of juror as witness on criminal trial of person committed, see "Witnesses," § 73.

Confessions as evidence of sanity, see "Criminal Law," § 518.

Evidence of absent witness to show insanity as ground for continuance, see "Criminal Law," §§ 595, 597.

Harmless error in reception of evidence as to insanity, see "Criminal Law," § 1168.

Incapacity as affecting confession of accused, see "Criminal Law," §§ 525, 526.

Incapacity of accused and others as ground for continuance, see "Criminal Law," § 589.

Insanity after conviction, see "Criminal Law," § 981.

Insanity as defense in criminal prosecutions, see "Criminal Law," §§ 48-51, 331, 354, 570, 740, 773, 782; "Homicide," §§ 27, 179, 237, 270, 294; "Larceny," § 3.

Insanity of accused ground for arrest of judgment, see "Criminal Law," § 973.

Insanity of conspirator as affecting liability of co-conspirators, see "Conspiracy," § 11.

Materiality of evidence as to insanity, see "Criminal Law," § 384.

Newly discovered evidence of insanity as ground for new trial, see "Criminal Law," §§ 938-940, 945.

Opinion evidence as to insanity, see "Criminal Law," §§ 456, 464, 465, 474, 478-481, 483-490, 493.

Plea of insanity, see "Criminal Law," § 286.

Presumption of sanity in criminal prosecutions, see "Criminal Law," § 311.

Separate trial of issue of insanity in criminal prosecutions, see "Criminal Law," §§ 623-625.

## § 83. Responsibility in general.

### Annotation.

Weakness of mind as affecting responsibility for criminal act.—10 L. R. A. (N. S.) 999, note.

(a) Code 1888, art. 59, §§ 4-11, provides for judicial proceedings to pass upon the alleged insanity of persons charged with crime. If found to be still insane, the court, or judge in vacation, is required to commit the defendant to a suitable asylum, and, in the cases therein mentioned, to appoint a trustee of his estate, who shall give bond for his support, etc. The statute is declared to apply "to the case of any person who may be arrested on any process issued by any court or judge of this state, founded on oath, requiring security to keep the peace, and who shall fail to give such security." Held, that, where an application to a judge of the Circuit Court in vacation shows that the person alleged to be insane is in the custody of the sheriff under a peace warrant issued by a magistrate, the judge may proceed under the statute to ascertain the fact of insanity, commit the insane person to the asylum, and appoint a trustee of his estate, etc., without going through the useless formality of issuing a new process to the sheriff for the arrest of the person already in his custody, and ascertaining that no one would become his security to keep the peace.—*Devilbiss v. Bennett*, 70 Md. 554, 17 Atl. 502. (See Code 1911, art. 59, §§ 4-11; act 1916, c. 566, p. 1630, amending §§ 4, 6.)

## § 84. Insanity at time of trial.

### Cross-Reference.

Procedure after verdict on issue of insanity as infringement of right to jury trial, see "Jury," §§ 31, 33.

## § 85. Punishment.

## § 86. Confinement and support of insane criminals.

### Cross-Reference.

As imposing cruel and unusual punishment, see "Criminal Law," § 1213.

### Annotation.

Confinement of one acquitted of crime by reason of insanity.—1 L. R. A. (N. S.) 540; 25 L. R. A. (N. S.) 946, notes.

## IX. ACTIONS.

### Cross-References.

Abatement and revival in case of death, see "Abatement and Revival," § 72.

Abatement of proceedings for probate of will by insanity of proponent, see "Wills," § 218.

Action to redeem from tax sale, see "Taxation," § 723.

Bankruptcy proceedings, see "Bankruptcy," § 13.

Incapacity as affecting time for service of notice of injuries from defect in street, see "Municipal Corporations," § 812.

Insanity as affecting computation of statutory period of desertion, see "Divorce," § 37.

Insanity as affecting limitation of actions, see "Limitation of Actions," § 74.

Insanity as defense to action for divorce, see "Divorce," § 43.

Limitations, see "Limitation of Actions," § 107.

Set-off in action by committee against successor, see "Set-Off and Counterclaim," § 46.

Stay of proceedings, see "Action," § 68.

Sufficiency of findings to support judgment in action for deceit, see "Fraud," § 67.

## § 87. Capacity to sue and be sued in general.

(a) In the absence of a special statute, a lunatic can be sued at law for a debt contracted before lunacy.—*Stigers v. Brent*, 50 Md. 214, 33 Am. Rep. 317. [Cited and annotated in 39 L. R. A. 775, 783, on insanity as affecting judgments.]

(b) A person actually a lunatic, though not found to be so on a writ of inquiry for that purpose, may sue as plaintiff with another person, who may be required to give bonds to account for the money which he shall receive in the suit in behalf of the lunatic.—*In re Owings*, 1 Bland 290. [Cited and annotated in 64 L. R. A. 524, 526, on insane person's right to sue by next friend.]

§§ 88-90. (See Analysis.)

## § 91. Jurisdiction and powers of courts.

### Cross-References.

Concurrent and conflicting jurisdiction, see "Courts," § 475.

Jurisdiction of federal courts as affected by citizenship of guardian or next friend, see "Courts," § 311; "Removal of Causes," § 32.

## § 92. Parties.

### Cross-Reference.

In action on special tax bill, see "Municipal Corporations," § 565.

(a) No one is entitled to be recognized as an heir of a living person, so as to authorize him to maintain a suit or proceeding in respect to the property of such person, though the latter is insane and incapable of managing his estate.—*Bradford v. McKenzie*, 89 Md. 763, 43 Atl. 923.

## § 93. Authority, rights, and duties of general guardian or committee.

### Annotation.

Right of guardian of mentally incompetent person to maintain action for damages against one to whom ward has transferred property.—34 L. R. A. (N. S.) 1058, note.

## § 94. Guardian ad litem or next friend.

### Cross-References.

Compensation as item of costs, see "Costs," § 177.

In bankruptcy, see "Bankruptcy," § 88.

Privity of insane person and guardian as affecting conclusiveness of judgment, see "Judgment," § 692.

### Annotation.

Right of insane persons to institute proceedings by next friend.—64 L. R. A. 513, note.

(a) In the absence of special statute, a lunatic can be sued at law for a debt contracted before lunacy, and a judgment obtained is properly entered against him, and not against his guardian. Moreover, there is no need of appointing a guardian ad litem.—*Stigers v. Brent*, 50 Md. 214, 33 Am. Rep. 317. [Cited and annotated, see *supra*, § 87.]

(b) Where a defendant has been found a lunatic, by inquisition, and it so appears by the bill, it is of course for his committee to answer for him; but where the committee is interested in the subject of the controversy, a guardian will be appointed to answer.—*In re Hewitt*, 3 Bland 184.

(c) A defendant shown to be of unsound mind may have a guardian appointed to answer for him without an inquisition of lunacy.—*Post v. Mackall*, 3 Bland 486.

(d) On a bill for conveyance in specific performance of an agreement of the deceased ancestor of the defendants, a writ was issued to inquire into the sanity of one of the infant heirs, and, on the return finding her insane, a committee was appointed to answer and defend in her behalf.—*Worthington v. Craddock*, 3 Bland 488, note.

(e) Plaintiff may on allegations and proof that the defendant was deranged and incapable of managing his affairs have a guardian ad litem appointed for him.—*Rothwell v. Boushell*, 1 Bland 373, note.

#### § 94½. Restoration to sanity pending action.

#### § 95. Process.

(a) A deputy sheriff called at the house of a lunatic defendant for the purpose of serving a summons in an action of debt against him, but was not allowed to see him. The deputy then exhibited the summons to the wife of the lunatic, by whom he was referred to her son, who managed the lunatic's estate, to whom the deputy showed the writ, which the sheriff returned indorsed by himself "summoned." At the trial counsel appeared for defendant. *Held*, that a sufficient service of the summons was shown.—*Stigers v. Brent*, 50 Md. 214, 33 Am. Rep. 317. [Cited and annotated, see supra, § 87.]

#### § 96. Appearance and representation by attorney.

(a) The appearance of a lunatic defendant by attorney gives the court jurisdiction, though the summons was insufficiently served.—*Stigers v. Brent*, 50 Md. 214, 33 Am. Rep. 317. [Cited and annotated, see supra, § 87.]

#### § 97. Pleading.

#### § 98. Evidence.

##### Cross-Reference.

Presumption as to security, see "Evidence," § 63.

#### § 99. Trial.

#### § 100. Judgment.

##### Cross-References.

Defect of parties as ground for equitable relief against, see "Judgment," § 424.

Evidence in proceedings for equitable relief, see "Judgment," § 461.

Meritorious cause of action or defense as affecting right to open default, see "Judgment," § 145.

Privity of insane person and guardian as affecting conclusiveness of judgment, see "Judgment," § 692.

##### Annotation.

Insanity as affecting judgments.—39 L. R. A. 775; 35 L. R. A. (N. S.) 1090, notes.

Effect of inquisition on validity of judgment against insane person.—35 L. R. A. (N. S.) 1097, note.

Judgment rendered in a civil action as evidence of insanity in criminal prosecution.—26 L. R. A. (N. S.) 461, note.

(a) Where a lunatic is sued for a debt contracted before lunacy, the judgment obtained is properly entered against him, and not against his guardian.—*Stigers v. Brent*, 50 Md. 214, 33 Am. Rep. 317. [Cited and annotated, see supra, § 87.]

#### § 101. Execution and enforcement of judgment.

#### § 102. Review.

##### Cross-References.

Allowance to next friend for expenses and payment of attorneys, see "Costs," § 177.

Appeal in forma pauperis, see "Appeal and Error," § 389.

Exemption from requirement of bond, see "Appeal and Error," § 374.

Guardian as party aggrieved giving right of review, see "Appeal and Error," § 151.

(a) A lunatic and his committee filed a bill to set aside a sale of the land by the lunatic, and have the land transferred to the lunatic, or sold for his benefit, and the court decreed a sale of the land. *Held*, that, if the affirmance of the bill is not sufficient to authorize the sale of the land, the error in decreeing the sale does not injure the grantee, and he cannot claim reversal on that ground.—*Wampler v. Wolfinger*, 13 Md. 337. [Cited and annotated in 21 L. R. A. 53, on purchaser at judicial sale as bona fide purchaser.]

#### § 103. Costs.

##### Cross-Reference.

Security for costs on appeal, see "Appeal and Error," § 389.

(a) Upon reversing a decree denying the petition of a devisee of a lunatic for the proceeds of the sale of her land by a committee because the sale was invalid, and adjudging the devisee's rights, the costs should be paid out of such proceeds, and not out of the estate or by the committee-defendants individually.—*Rutledge v. Rutledge*, 118 Md. 552, 85 Atl. 661.

## INSANITY.\*

*Cross-Reference.*

See "Insane Persons."

## INSECTS.

*Cross-Reference.*

Injurious to crops or fruit trees, see "Agriculture," § 9.

## INSOLVENCY.\*

*Scope-Note.*

[INCLUDES administration of estates of insolvents under local laws for the purpose of distribution of the assets among creditors, and discharge of the insolvents from liability for their debts; constitutional and statutory provisions relating thereto; what constitutes insolvency; nature, grounds, limits, and subjects of jurisdiction in insolvency cases; and procedure therein.

[EXCLUDES administration of insolvent estates of decedents (see "*Executors and Administrators*") ; voluntary assignments by debtors for benefit of their creditors (see "*Assignments for Benefit of Creditors*") ; bankruptcy under general bankrupt laws (see "*Bankruptcy*") ; and organization, etc., of courts having jurisdiction over proceedings in insolvency (see "*Courts*").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

### I. Constitutional and Statutory Provisions.

- § 1. Insolvency laws.
- § 2. — Constitutionality.
- § 3. — Construction and operation in general.
- § 4. — Retroactive operation.
- § 5. — Amendment and repeal.
- § 6. Foreign insolvent laws.

### II. Proceedings for Declaration of Insolvency and Surrender or Seizure of Property.

#### (A) JURISDICTION AND COURSE OF PROCEDURE IN GENERAL.

- § 7. Jurisdiction of courts of insolvency in general.
- § 8. Persons subject to jurisdiction.
- § 9. — In general.
- § 10. — Residence or place of business.
- § 11. Property subject to jurisdiction.
- § 12. Process or notice necessary to jurisdiction.
- § 13. Objections to jurisdiction.
- § 14. Proceedings in general.
- § 15. Duties of debtor in general.
- § 16. Schedules.
- § 17. Records.

\*Annotation: Words and Phrases, same title.

**II. Proceedings for Declaration of Insolvency and Surrender or Seizure of Property—Continued.****(B) VOLUNTARY PROCEEDINGS.**

- § 18. Nature and grounds in general.
- § 19. Grounds for opposition.
- § 20. Persons entitled to benefit of insolvent law.
- § 21. Petition and proceedings thereon.
- § 22. Adjudication.

**(C) INVOLUNTARY PROCEEDINGS.**

- § 24. Insolvency of debtor.
- § 25. Acts of insolvency.
- § 26. Defenses and grounds for opposition.
- § 27. Persons who may be adjudged insolvent.
- § 28. Petitioning creditors.
- § 29. — Persons entitled to file or join in petition.
- § 30. — Number and amount of claims.
- § 31. Creditors entitled to oppose petition.
- § 32. Petition and filing and presentation thereof.
- § 33. Security.
- § 34. Service of petition and process or notice.
- § 35. Proceedings to contest petition.
- § 36. Hearing and determination.
- § 37. Adjudication.

**(D) SEIZURE AND CUSTODY OF PROPERTY.**

- § 38. Possession and control pending proceedings in general.
- § 39. Restraining transfer or disposition by debtor.
- § 40. Restraining interference by third persons.
- § 41. Warrant and seizure pending proceedings.
- § 42. Appointment of receiver pending proceedings.
- § 43. Sale or other disposition of property pending proceedings.

**III. Assignment, Administration, and Distribution of Insolvent's Estate.****(A) APPOINTMENT, QUALIFICATION, AND TENURE OF ASSIGNEE OR TRUSTEE.**

- § 44. Office of assignee or trustee.
- § 45. Competency.
- § 46. Election by creditors.
- § 47. Appointment by court.
- § 48. Bond.
- § 49. Failure to qualify or act.
- § 50. Resignation, disqualification, and removal.
- § 51. Appointment of successor or receiver.

**(B) ASSIGNMENT, AND TITLE, RIGHTS, AND REMEDIES OF ASSIGNEE OR TRUSTEE IN GENERAL.**

- § 52. Effect of appointment and qualification.
- § 53. Assignment and other transfers by insolvent to assignee or trustee.
- § 54. Property and rights vesting in assignee or trustee.
- § 55. — In general.
- § 56. — Partnership and individual property.
- § 57. Title acquired by assignee or trustee.

**III. Assignment, Administration, and Distribution of Insolvent's Estate—Continued.****(B) ASSIGNMENT, AND TITLE, RIGHTS, AND REMEDIES OF ASSIGNEE OR TRUSTEE IN GENERAL—Continued.**

- § 58. Set-offs and counterclaims against assignee or trustee.
- § 59. Equities of third persons.
- § 60. Rights as to pending actions.

**(C) PREFERENCES AND TRANSFERS BY INSOLVENT, AND ATTACHMENTS AND OTHER LIENS.**

- § 61. Preferences.
- § 62. Transfers in general.
- § 63. Fraudulent transfers.
- § 64. Liens in general.
- § 66. Liens acquired by legal proceedings.
- § 67. — In general.
- § 68. — Attachment or garnishment.
- § 69. — Judgment or execution and proceedings thereon.
- § 70. — Proceedings in other states or countries.
- § 71. Dissolution of liens or attachments and other proceedings by adjudication.
- § 72. Remedies to establish or enforce rights or liens.

**(D) ADMINISTRATION OF ESTATE.**

- § 73. Jurisdiction of courts.
- § 74. Powers, duties, and liabilities of officers.
- § 75. Meetings of creditors.
- § 76. Examination of insolvent or others.
- § 77. Proceedings in cause after adjudication.
- § 78. Authority and functions of assignee or trustee in general.
- § 79. Determination of controversies.
- § 80. Discovery and collection of assets.
- § 81. Custody and management of estate.
- § 82. Sale or other disposition of assets.
- § 83. Contracts, investments, and expenditures.
- § 84. Accounts, statements, and reports of assignee or trustee.
- § 85. Fraud or other misconduct of assignee or trustee.
- § 86. Loss of property.
- § 87. Reimbursement and indemnity to assignee or trustee.
- § 88. Co-assignees and co-trustees.
- § 89. Successive assignees or trustees.

**(E) ACTIONS BY OR AGAINST ASSIGNEE OR TRUSTEE.**

- § 90. Actions by assignee or trustee.
- § 91. Actions against assignee or trustee.
- § 92. Defenses against assignee or trustee.
- § 93. Defenses by assignee or trustee.
- § 94. Jurisdiction and venue.
- § 95. Parties.
- § 96. Joinder or intervention in actions by insolvent or others.
- § 97. Process and appearance.
- § 98. Pleading.
- § 99. Evidence.



**III. Assignment, Administration, and Distribution of Insolvent's Estate—**  
Continued.

(E) ACTIONS BY OR AGAINST ASSIGNEE OR TRUSTEE—Continued.

- § 100. Trial.
- § 101. Judgment and enforcement thereof.
- § 102. Review.
- § 103. Costs.

(F) CLAIMS AGAINST AND DISTRIBUTION OF ESTATE.

- § 104. Creditors entitled to prove claims.
- § 105. Claims provable.
- § 106. Amount of claims.
- § 107. — In general.
- § 108. — Secured claims.
- § 109. — Interest.
- § 110. Costs.
- § 111. Set-offs and counterclaims.
- § 112. Necessity of presentation of claims.
- § 113. Time for presentation of claims.
- § 114. Proof of claims.
- § 115. Objections to claims and proceedings thereon.
- § 116. Allowance or disallowance.
- § 117. Priorities.
- § 118. — Rights of creditors in general.
- § 119. — Statutory preferences.
- § 120. — Partnership and individual creditors.
- § 121. Mode of distribution.
- § 122. Proceedings for distribution in general.
- § 123. Dividends.
- § 124. Releases by creditors.
- § 125. Effect of proof and distribution on rights of creditors.
- § 126. Failure to prove claims or participate in distribution.

(G) ACCOUNTING AND DISCHARGE OF ASSIGNEE OR TRUSTEE.

- § 127. Duty to account in general.
- § 128. Proceedings for accounting.
- § 129. Charges.
- § 131. Compensation.
- § 132. Form and requisites of account.
- § 133. Objections to account and proceedings thereon.
- § 134. Approval or disapproval of account.
- § 135. Discharge of assignee or trustee.
- § 136. Liabilities of defaulting assignee or trustee and of sureties.

**IV. Composition, Respite, or Raising Assignment.**

- § 137. Composition.
- § 138. — Proposal and proceedings thereon.
- § 139. — Acceptance or refusal.
- § 140. — Confirmation.
- § 141. — Operation and effect.
- § 142. Respite.
- § 143. Raising assignment and discontinuance of proceedings.

**V. Rights, Remedies, and Discharge of Insolvent.**

- § 144. Status of insolvent in general.
- § 145. Actions by or against insolvent.
- § 146. Discharge from arrest or imprisonment.
- § 147. Exemptions.
- § 148. Death of insolvent.
- § 149. Right to discharge in general.
- § 150. Grounds for refusal of discharge.
- § 151. Application for discharge and proceedings thereon.
- § 152. Consent or opposition of creditors to discharge.
- § 153. Order or decree as to discharge.
- § 154. Revoking discharge.
- § 155. Operation and effect of discharge.
- § 156. — In general.
- § 157. — Collateral attack.
- § 158. — Debts and liabilities discharged.
- § 159. — Co-debtors, guarantors, and sureties.
- § 160. — Securities and liens.
- § 161. — Persons concluded in general.
- § 162. — Nonresidents.
- § 163. — Effect of foreign discharge.
- § 164. New promise to pay debt discharged.
- § 165. Pleading discharge.
- § 166. Evidence as to discharge or new promise.
- § 167. Reversion of property or surplus to debtor on termination of proceedings.

**VI. Appeal and Revision of Proceedings.**

- § 168. Superintendence and revision.
- § 169. — Nature and scope of remedy.
- § 170. — Jurisdiction.
- § 171. — Proceedings.
- § 172. Appeal.
- § 173. — Appellate jurisdiction.
- § 174. — Decisions reviewable.
- § 175. — Right of review.
- § 176. — Presentation and reservation in lower court of grounds of review.
- § 177. — Certification of questions to appellate court.
- § 178. — Taking and perfecting appeal, and effect.
- § 179. — Record.
- § 180. — Dismissal.
- § 181. — Hearing.
- § 182. — Review.
- § 183. — Determination and disposition of cause.
- § 184. — Liabilities on appeal bonds.

**VII. Costs and Fees.**

- § 185. Rights and liabilities as to costs.
- § 186. Security for costs.
- § 187. Fees of officers.
- § 188. Fees of attorneys and counsel.

**VIII. Offenses Against Insolvency Laws.**

- § 189. Offenses and punishment.

*Cross-References.*

- See "Assignments for Benefit of Creditors," "Bankruptcy," "Receivers."
- Creation and abolition of courts of insolvency, see "Courts," § 42.
- Creation of courts of insolvency, uniformity of operation of law, see "Statutes," § 98.
- Discharge of debtor from imprisonment on surrender or disclosure of property, see "Arrest," § 52.
- Discharge of execution debtor on bond to proceed under insolvent laws, see "Execution," § 449.
- Discharge of execution debtor on surrender or disclosure of property, see "Execution," § 450.
- Effect of bankruptcy acts on state insolvency laws and proceedings, see "Bankruptcy," § 9.
- Effect on accord and satisfaction, see "Accord and Satisfaction," § 8.
- Effect on liability to taxation, see "Taxation," §§ 59, 236.
- Effect on title to patent, see "Patents," § 204.
- Effect on title to trade-mark or trade-name, see "Trade-Marks and Trade-Names," § 37.
- Evidence, presumptions, hearsay and opinion evidence as to solvency or insolvency in general, see "Evidence," §§ 56, 322, 471, 474, 479, 501.
- Evidence, receivership of railroad company as evidence of insolvency, see "Railroads," § 211.
- Ground for appointment of receiver, see "Receivers," § 19.
- Ground for attachment, see "Attachment," § 23.
- Ground for cancellation of instrument in equity, see "Cancellation of Instruments," § 16.
- Ground for dissolution of firm, see "Partnership," § 271.
- Ground for rescission of contract of sale, see "Sales," § 100.
- Ground for set-off, see "Set-Off and Counterclaim," § 8.
- Insurance of solvency of debtors, see "Insurance," §§ 284, 432, 511.
- Interference by state court with property to which jurisdiction of federal court has attached, and vice versa, see "Courts," § 504.
- Oath in insolvency proceedings as constituting perjury, see "Perjury," §§ 6, 9.
- Of bank, see "Banks and Banking," §§ 63-85, 285-288, 309.
- Of broker as breach of contract of employment, see "Brokers," § 33.
- Of building and loan association, see "Building and Loan Associations," § 42.
- Of buyer, and concealment thereof, as affecting validity of sale, see "Sales," § 45.
- Of buyer as ground of stoppage in transitu, see "Sales," § 291.
- Of club, see "Clubs," § 13.
- Of collecting bank, effect on rights and liabilities as to proceeds of collection, see "Banks and Banking," § 166.
- Of corporations in general, see "Corporations," §§ 349, 537-569.
- Of debtor as affecting dissolution of lien by adjudication in bankruptcy, see "Bankruptcy," § 199.
- Of debtor as affecting duration of judgment lien, see "Judgment," § 795.
- Of debtor as affecting presumption of payment from lapse of time, see "Payment," § 66.
- Of debtor as affecting right to maintain creditors' suit before exhausting legal remedies, see "Creditors' Suit," § 14.
- Of debtor as determining right to make assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 26.
- Of debtor as element of preference, see "Bankruptcy," § 160.
- Of debtor as ground for involuntary bankruptcy, see "Bankruptcy," § 54.
- Of decedent's estate, see "Executors and Administrators," §§ 408-419.
- Of executor as ground for omitting as party to action against coexecutor, see "Executors and Administrators," § 438.
- Of executor or administrator as ground for removal, see "Executors and Administrators," § 35.
- Of factor, see "Factors," § 36.
- Of foreign corporations, see "Corporations," §§ 679, 680, 682-688.
- Of grantor, element of fraud as to creditors, see "Fraudulent Conveyances," §§ 57-62.
- Of husband, effect on right of wife to become sole trader, see "Husband and Wife," § 91.
- Of insurance company, see "Insurance," §§ 42-51, 62-72.
- Of judgment creditor as ground for equitable relief against judgment, see "Judgment," §§ 408, 429, 439.
- Of judgment plaintiff as ground for opening or vacating affirmed judgment, see "Appeal and Error," § 1199.
- Of loan, trust or investment company, see "Banks and Banking," § 317.

Of master as affecting right of employees to lien for wages, see "Master and Servant," § 82.  
 Of master as affecting right of employees to preference in distribution of proceeds of execution sale, see "Execution," § 324.  
 Of master as terminating employment, see "Master and Servant," § 24.  
 Of partnership, see "Partnership," §§ 372-374.  
 Of party as affecting right of action for conversion, see "Trove and Conversion," § 16.  
 Of party to action as affecting parties on appeal, see "Appeal and Error," § 327.  
 Of party to action ground for abatement, see "Abatement and Revival," §§ 43, 44.  
 Of party to contract, as discharge, see "Contracts," § 310.  
 Of person maintaining nuisance as ground for abatement, see "Nuisance," § 23.  
 Of principal contractor as affecting owner's right to pay mechanics' liens, see "Mechanics' Liens," § 240.  
 Of religious society, see "Religious Societies," § 32.

Of street railroad company, see "Street Railroads," § 58.  
 Of telegraph or telephone company, see "Telegraphs and Telephones," § 21.  
 Of transmitting bank, effect on rights and liabilities, as to proceeds of collection, see "Banks and Banking," § 157.  
 Of trustee after mingling of trust and individual funds, effect on right to follow trust property or proceeds thereof, see "Trusts," § 353.  
 Of turnpike and toll road companies, see "Turnpikes and Toll Roads," § 27.  
 Of unincorporated association, see "Associations," § 21; "Joint-Stock Companies," § 20.  
 Proceedings in insolvency as affecting limitation of actions, see "Limitation of Actions," § 110.  
 Proceedings in insolvency as barring dower, see "Dower," § 46.  
 Prohibition to restrain insolvency proceedings, see "Prohibition," § 3.  
 Right to trial by jury in insolvency proceedings, see "Jury," § 19.

## I. CONSTITUTIONAL AND STATUTORY PROVISIONS.

### Cross-References.

Effect of partial invalidity of statute, see "Statutes," § 64.  
 Laws dissolving attachments on insolvents' property as impairing vested rights, see "Constitutional Law," §§ 106, 161.  
 Laws impairing obligation of contracts, see "Constitutional Law," § 163.  
 Right to trial by jury, see "Jury," § 19.  
 State insolvent laws as violating Constitution giving Congress power to pass bankruptcy laws, see "Bankruptcy," § 9.  
 Subject and title of act, see "Statutes," § 117.  
 Waiver of right to raise constitutional questions, see "Constitutional Law," § 43.

### Annotation.

See Code, art. 47, §§ 1, et seq.

### § 1. Insolvency laws.

### § 2.— Constitutionality.

### § 3.— Construction and operation in general.

(a) A state insolvent law does not apply to contracts made within the state between a citizen of that state and one of another, nor to those not made within the state, but only to those made within the state between citizens thereof.—*Poe v. Duck*, 5 Md. 1.

(b) It is for the Legislature, and not for the courts, to judge what shall be, at any particular period, the policy of the insol-

vent system. The business of courts is faithfully to interpret the laws, without any regard to the private notions of the judges touching the policy of this or that provision.—*Stewart v. Union Bank*, 7 Gill 439.

### § 4.— Retroactive operation.

(a) Act 1880, c. 172, by which certain sections of Code 1860, title "Insolvents," were repealed and re-enacted, with amendments, and certain new sections added, is not retrospective, and has no effect upon cases pending at the time of its passage.—*Gable v. Scott*, 56 Md. 176. (See Code 1911, art. 47, §§ 1, et seq.)

### § 5.— Amendment and appeal.

#### Cross-References.

See ante, § 4.

(a) A., a resident and citizen of New York, sold and delivered goods in that city to B., a resident and citizen of Maryland, for which B., on the 12th of May, 1841, gave A. his note at six months, dated November 6, 1840. On the 12th of May, 1841, A.'s agent received of B. in Maryland merchandise and promissory notes of third parties for about the amount of B.'s note, and gave him up his note. B. was then insolvent, which fact was known to A. In August following, B. applied for relief under the insolvent laws of Maryland. His permanent trustee brought trover against A.'s agent to recover the

value of the notes and merchandise so received by him, as being a preference against the policy of the insolvent laws. *Held*, that he could not recover, those laws having no force, as against a citizen of New York, to render the delivery of the notes and merchandise to him invalid.—*Larrabee v. Talbott*, 5 Gill 426, 46 Am. Dec. 637. [Cited and annotated in 45 L. R. A. 187, on relation of bankrupt law to insolvent proceedings under state laws.]

### § 6. Foreign insolvent laws.

## II. PROCEEDINGS FOR DECLARATION OF INSOLVENCY AND SURRENDER OR SEIZURE OF PROPERTY.

### (A) JURISDICTION AND COURSE OF PROCEDURE IN GENERAL.

#### Cross-References.

Jurisdiction of appeal, see post, § 173.

Jurisdiction over administration of estate, see post, § 73.

Interference by state court with property to which jurisdiction of federal court has attached, and vice versa, see "Courts," § 504.

Prohibition to restrain court from proceeding, see "Prohibition," § 3.

Right to jury trial, see "Jury," § 19.

### § 7. Jurisdiction of courts of insolvency in general.

#### Cross-References.

In administration of estate, see post, § 73.

Creation and abolition of courts, see "Courts," § 42.

Uniformity of operation of law establishing court of insolvency, see "Statutes," § 98.

(a) No power of adjudicating in rem is given a County Court by the insolvent system of Maryland.—*Syester v. Brewer*, 27 Md. 288. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(b) The courts to which has been given jurisdiction in cases of insolvency proceed, in the exercise of a special authority, on principals of equity, without being courts of equity.—*Purviance v. Glenn*, 8 Md. 202.

(c) By the act of 1805, c. 110, and its supplements, the whole administration of the property of the insolvent, beginning with the sale and ending in distribution, is devolved upon the County Court through its trustee; and its judgment in all matters

appertaining to it is conclusive, because these are the exclusive subjects of the special jurisdiction conferred by that act.—*Carter v. Dennison*, 7 Gill 157. (See Code, art. 47, § 1.)

(d) The institution of the court of commissioners of insolvent debtors by the act of 1816, c. 221, and its supplements was only designed to relieve the County Court from the pressure of its increasing business, imposed by this extensive class of cases. It was but an ancillary tribunal, bound to report and return all its proceedings, and still subject to the Baltimore County Court.—*Carter v. Dennison*, 7 Gill 157. (See Code, art. 47, §§ 1, et seq.)

(e) The object of the act of 1835, c. 235, was to authorize the Baltimore County Court, ex officio, to require from the trustees of insolvents who should "thereafter apply for the benefit of the insolvent laws" an annual report of the funds belonging to their trust, with a view "to cause distribution to be made among the creditors."—*Carter v. Dennison*, 7 Gill 157. (See Code, art. 47, §§ 1, 2.)

(f) The first section of the act of 1836, c. 133, extended this power to cases "pending in said court" in which the trustees had not distributed the fund, giving to such trustees in "cases then pending," and limited to such, the right to apply "to said court, or some court of equity," for an audit and directions to distribute or invest the funds.—*Carter v. Dennison*, 7 Gill 157. (See Code, art. 47, §§ 1, et seq.)

(g) The true construction of the provision in the second section of act 1836, c. 133, "that the power of the court to appoint an auditor" in insolvent cases shall be concurrent with that of the court of equity, is that the Baltimore County Court shall have the power to appoint an auditor in the investigation of insolvent cases, to the same intent that courts of equity appoint an auditor in the course of their equity jurisdiction.—*Carter v. Dennison*, 7 Gill 157. (See Code, art. 47, §§ 1, et seq.)

(h) But when the same section further confers powers concurrent with the courts of equity in the distribution of the funds of insolvent debtors, it assumes a power to exist

which is not within the scope of chancery jurisdiction, and confers nothing; therefore the provision is a nullity.—*Carter v. Denison*, 7 Gill 157.

§§ 8-11. (See Analysis.)

**§ 12. Process or notice necessary to jurisdiction.**

(a) The fact that creditors preferred in an assignment have not been served with process, and could not be forced into the proceedings if so served, does not deprive the insolvency court of jurisdiction, the property assigned being within the state where the debtor resides and the insolvency law is in force; since the assignment becomes void by operation of law as a result of the adjudication of insolvency, which, as a judgment in rem, is binding on every one.—*Brown v. Smart*, 69 Md. 320, 14 Atl. 468, 17 Atl. 1101.

(b) The insolvent act provides one mode only of notifying him against whom proceedings are instituted, viz. by service of a summons. If, therefore, he cannot be served, the court is without power to proceed ex parte.—*Whyte v. Betts Machine Co.*, 61 Md. 172; *Paul v. Same*, Id.

§§ 13-15. (See Analysis.)

**§ 16. Schedules.**

*Cross-Reference.*

Operation of discharge on debts not scheduled, see post, § 158.

(a) The failure of an applicant for the benefit of the insolvent law to exhibit with his petition "a schedule of his property and a list of debts due from and to him, with the names of his debtors and creditors, all verified by affidavit," as required by the act of 1854, c. 193, § 1, cannot have the effect of rescinding the appointment of the trustee made upon such application.—*Teackle v. Crosby*, 14 Md. 14. (See Code 1911, art. 47, § 1.)

**§ 17. Records.**

(B) VOLUNTARY PROCEEDINGS.

**§ 18. Nature and grounds in general.**

**§ 19. Grounds for opposition.**

**§ 20. Persons entitled to benefit of insolvent law.**

*Cross-Reference.*

See post, § 27.

(a) The insolvent law contained in Code 1860, art. 48, and in previous acts, does not embrace the case of a married woman as an insolvent debtor; nor do the acts subsequent to the Code, making special provision for enabling married women to contract, and for recoveries against them at law, extend the provisions or affect the construction of the insolvent law in the Code.—*Relief Building Ass'n v. Schmidt*, 55 Md. 97. (See *Clark v. Manko*, 80 Md. 78, 30 Atl. 621. But see Code 1911, art. 47, § 85.)

(b) The fact that a petitioner for the benefit of the insolvent laws is not actually insolvent does not affect the validity of his discharge, nor oust the jurisdiction of the insolvent court.—*Weaver v. Leiman*, 52 Md. 708. [Cited and annotated in 47 L. R. A. (N. S.) 454, on limitation of suits to compel accounting by, or to recover on bond of guardian; in 41 L. R. A. 451, 456, on entries in family Bible or other religious book as evidence.]

**§ 21. Petition and proceedings thereon.**

(a) An attaching creditor cannot impeach an adjudication in insolvency, and claim a distributive share of the insolvent estate at the same time.—*Gottschalk v. Smith*, 74 Md. 560, 22 Atl. 401. [Cited and annotated in 26 L. R. A. 595, 597, on right to attach property in hands of assignee for creditors.]

(b) A petition in insolvency must allege the facts upon which the application is grounded. They must be specifically set forth, not broadly and vaguely stated.—*Schiff v. Solomon*, 57 Md. 572.

(c) Allegations by a creditor against a petitioner for the benefit of the insolvent laws cannot be removed under a suggestion, to an adjoining county for trial.—*Michael v. Schroeder*, 4 H. & J. 227.

**§ 22. Adjudication.**

§ 23. (Omitted from the classification used herein.)

(C) INVOLUNTARY PROCEEDINGS.

**§ 24. Insolvency of debtor.**

*Cross-References.*

Evidence of insolvency in actions to set aside fraudulent transfer, see post, § 99.

Insolvency as element of preference, see post, § 61.

Evidence as to solvency or insolvency in general, see "Evidence," §§ 56, 322, 471, 474, 479, 501.

What constitutes insolvency within meaning of national bankruptcy law, see "Bankruptcy," § 54.

## § 25. Acts of insolvency.

(a) Where an insolvent trading firm, which is unable to pay its debts in the usual course of business, sells its stock, and immediately returns part of the price to the purchaser to cancel a prior debt due him, such repayment is an illegal preference, which constitutes an act of insolvency. Code 1888, art. 47, § 22. —*Willison v. First Nat. Bank*, 80 Md. 196, 30 Atl. 749. (See Code 1911, art. 47, § 22.)

[Cited and annotated in 31 L. R. A. 649, on participation in debtor's fraudulent intent invalidating transfer; in 37 L. R. A. 348, on preference by mortgage or sale as assignment for creditors.]

(b) The honest belief of a person, who knows himself to be insolvent at the time of showing preference to creditors, that he would be able to go on in business, is no defense to his other creditors' petition to have him declared an insolvent.—*Castleberg v. Wheeler*, 68 Md. 266, 12 Atl. 3. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

## § 26. Defenses and grounds for opposition.

(a) Act 1894, c. 568, which exempts from the operation of the insolvent law bona fide deeds of trust for the benefit of creditors, does not bar insolvency proceedings against such grantor.—*Gardner v. Gambrill*, 86 Md. 658, 39 Atl. 318. (See Code 1911, art. 47, § 34.)

## § 27. Persons who may be adjudged insolvent.

### Cross-Reference.

See ante, § 20.

(a) A trader who, before default has been made in the payment of a draft drawn by him, makes a general assignment for the benefit of his creditors, does not cease to be a trader so as to escape the provisions of the insolvent law (Code 1888, art. 47 § 22, as amended by act 1896, c. 446), providing

for the insolvency of merchants and traders. —*Gardner v. Gambrill*, 86 Md. 658, 39 Atl. 318. (See Code 1911, art. 47, § 22.)

(b) A married woman trading as a feme sole pursuant to Code 1888, art. 56, § 36, is not subject to the provisions of Code, art. 47, § 23, relating to involuntary insolvency.—*Clark v. Manko*, 80 Md. 78, 30 Atl. 621. (See *Relief Building Ass'n v. Schmidt*, 55 Md. 97; Code 1911, art. 47, § 23; art. 56, § 39. But see Code 1911, art. 47, § 35.)

(c) A joint proceeding against several as partners will not lie under the insolvent law. Proceedings must be taken against each separately.—*Cator v. Martin*, 57 Md. 397; *Schiff v. Solomon*, Id. 572.

## §§ 28-30. Petitioning creditors.

(a) Under U. S. Const., art. 4, § 2, providing that citizens may sue in the courts of any state, nonresident creditors may have their debtor declared an insolvent under Code 1860, art. 48, as amended by act 1886, c. 298, and are then bound by the proceedings, and their demands cancelled by the debtor's discharge.—*Brown v. Smart*, 69 Md. 320, 14 Atl. 468, 17 Atl. 1101. (See Code 1911, art. 47, §§ 1, et seq.)

(b) Creditors who have filed their claims with a trustee under a general assignment are not estopped to petition to declare the debtor insolvent.—*Castleberg v. Wheeler*, 68 Md. 266, 12 Atl. 3. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(c) The right of creditors to petition to have a debtor adjudged insolvent under act 1880, c. 172, relative to involuntary insolvency, arises at the time the act of insolvency is committed; and the fact that their claims are not due is immaterial.—*Schiff v. Solomon*, 57 Md. 572. (See Code, art. 47, § 23.)

## § 31. Creditors entitled to oppose petition.

## § 32. Petition and filing and presentation thereof.

### Cross-References.

Petition in voluntary proceedings, see ante, § 21.

Demurrer as mode of raising objection to verification of petition, see "Pleading," § 193.

(a) A prayer to declare a person insolvent specifying the persons to whom defendant had "assigned, given, sold, and transferred" his property with intent to hinder, delay, and defraud petitioners and his other creditors while he was insolvent and in contemplation of insolvency, states facts sufficient and proper to be submitted to a jury, under Code 1860, art. 48, §§ 13, 24, as re-enacted in act 1886, c. 298.—*Castleberg v. Wheeler*, 68 Md. 266, 12 Atl. 3. (See Code 1911, art. 47, §§ 14, 23.) [Cited and annotated, see supra, § 25.]

§§ 33-35. (See Analysis.)

### § 36. Hearing and determination.

(a) On the hearing of a petition to have defendant declared an insolvent on the ground that he had transferred his property with intent to "hinder, delay, and defraud" creditors, a prayer by defendant that the jury be instructed that to find for petitioners they must find that defendant, within the time mentioned, and while insolvent, made a deed or created a lien, or otherwise gave an unlawful preference in favor of N., named in the petition, is properly refused when N. is not the only person alleged to have been so favored.—*Castleberg v. Wheeler*, 68 Md. 266, 12 Atl. 3. [Cited and annotated, see supra, § 25]

### § 37. Adjudication.

(a) A creditor filed a petition to have the debtor adjudged insolvent, and alleged a fraudulent transfer of personalty to G. Defendant denied the averments, and demanded a jury trial. G. voluntarily answered, denying that the transfer was fraudulent. At the trial, defendant asked leave to withdraw his answer and demand. Plaintiff objected, because the answer of G. would still remain in the case. Thereupon G. gave notice that when defendant's answer and demand were withdrawn, and defendant was adjudged insolvent, he would withdraw his answer if he could do so without prejudice. Defendant's answer and demand were then withdrawn, and, no further defense being made, he was adjudged an insolvent. The court, over plaintiff's objection, allowed G. to withdraw his answer without prejudice. *Held*, that the withdrawal of G.'s answer,

though formally without prejudice, was at his peril; and, having withdrawn, he was bound by an adjudication that defendant was insolvent when the transfer was made.—*Vogler v. Rosenthal*, 85 Md. 37, 36 Atl. 650, 60 Am. St. Rep. 298.

(b) In an action against a debtor and his grantee to adjudge the debtor an insolvent the court has power not only to adjudge the debtor an insolvent, but also to set aside the conveyance to the grantee as giving him an unlawful preference.—*Dumler v. Bergmann*, 79 Md. xiii, memorandum case, 29 Atl. 826, full report.

(c) A petition in insolvency charging that defendant, being a merchant, and engaged in business, and being then insolvent, and indebted to the petitioners in an amount exceeding \$250, did, within 60 days before filing the petition, convey to his wife a mortgage, which he then held, and other personal property, with intent thereby to delay, hinder, and defraud his creditors, alleges every fact necessary to make out a case of involuntary insolvency, and verdict thereon "for the petitioners" is sufficient to support a judgment.—*Bowland v. Wilson*, 71 Md. 307, 18 Atl. 536.

### (D) SEIZURE AND CUSTODY OF PROPERTY.

#### Cross-Reference.

Interference by state court with property to which jurisdiction of federal court has attached, and vice versa, see "Courts," § 504.

§§ 38-41. (See Analysis.)

### § 42. Appointment of receiver pending proceedings.

(a) Under Code 1888, art. 47, § 23, providing that, when the court has appointed a preliminary trustee, the property shall be divested out of the insolvent and vested in the trustee as soon as his bond is approved, the insolvent must make a conveyance of the property to the trustee.—*Clark v. Manko*, 80 Md. 78, 30 Atl. 621. (See Code 1911, art. 47, § 23.)

(b) The provisional trustee of an insolvent debtor, under act 1816, c. 221, is the mere recipient of the property of the insolvent, which the law contemplates his receiving immediate possession of from the insolvent



himself, and not by suit against third persons.—*Brown v. Brice*, 2 H. & G. 24. (See Code, art. 47, § 2.)

(c) A provisional trustee, appointed under the statute "relating to insolvent debtors in Baltimore" (act 1816, c. 221), is bound to deliver up the estate and effects of the insolvent to the permanent trustee on demand. If he refuse, he is liable for interest, and entitled to no compensation for his services. It would appear that the fact that the United States are creditors of the insolvent will not vary the obligation.—*Williams v. Ellicott*, 6 H. & J. 427. (See Code, art. 47, § 2.)

(d) A provisional trustee of an insolvent debtor, appointed under act 1816, c. 221, § 2, cannot maintain an action of trover for promissory notes which were delivered by the insolvent himself to the defendant to discharge a debt due him.—*Kennedy v. Boggs*, 5 H. & J. 403. (See Code, art. 47, § 2.)

(e) A provisional trustee, appointed to take possession of insolvent property pending the appointment of a permanent trustee, has no authority to bring suit to set aside a fraudulent conveyance by the insolvent.—*Kennedy v. Boggs*, 5 H. & J. 403.

#### § 43. Sale or other disposition of property pending proceedings.

(a) The provisional trustee cannot assign a judgment belonging to the insolvent, and if an assignee collects a judgment so assigned he is answerable to the permanent trustee.—*Brown v. Brice*, 2 H. & G. 24.

### III. ASSIGNMENT, ADMINISTRATION, AND DISTRIBUTION OF INSOLVENT'S ESTATE.

#### (A) APPOINTMENT, QUALIFICATION, AND TENURE OF ASSIGNEE OR TRUSTEE.

#### § 44. Office of assignee or trustee.

(a) The permanent trustee supersedes the provisional trustee.—*Phelps v. Phelps*, 17 Md. 120.

#### § 45. Competency.

#### § 46. Election by creditors.

##### *Cross-Reference.*

Meeting of creditors on administration and distribution of estate, see post, §§ 75, 122.

(a) An attorney for the prosecution of a claim of a foreign creditor against an insolvent debtor has authority to unite with the domestic creditors in recommending the appointment of a particular person as a trustee for the insolvent, in the absence of any restrictions to the contrary.—*Jones v. Horsey*, 4 Md. 306, 59 Am. Dec. 81.

#### § 47. Appointment by court.

#### § 48. Bond.

(a) To sustain a bill in chancery by the permanent trustee of an insolvent debtor, he must show that he gave bond, with surety, in that character, before filing the bill.—*Stewart v. Stone*, 3 G. & J. 510.

(b) Where the trustee of an insolvent brings suit before giving bond as required by the insolvent law of New Jersey, he cannot maintain the suit though he thereafter gives the required bond.—*Winchester v. Union Bank*, 2 G. & J. 79, 19 Am. Dec. 255.

(c) Under the provisions of the insolvent law of New Jersey that a trustee shall give bonds as security for his acts as such, until such bond is given he cannot in any manner intermeddle with the property of the insolvent.—*Winchester v. Union Bank*, 2 G. & J. 79, 19 Am. Dec. 255.

#### § 49. Failure to qualify or act.

(a) Under the insolvent law, the commissioners, after having appointed a permanent trustee, and certified to the court of the county that the debtor has not complied with the terms and conditions of the law, may, upon the neglect of such trustee to give bonds within a reasonable time, appoint a new permanent trustee.—*Glasgow v. Sands*, 3 G. & J. 96.

#### § 50. Resignation, disqualification, and removal.

##### *Cross-Reference.*

Right to appeal, see post, § 175.

(a) The fact that the person appointed trustee did not represent any of the creditors, but was counsel for the applicant, is no sufficient ground for rescinding his appointment.—*Teackle v. Crosby*, 14 Md. 14.

(b) The Court of Chancery has no jurisdiction in the removal of trustees of insolvent debtors, the whole subject being regu-

lated by statutes, and resting with the courts of law, to which the whole administration of the insolvent's assets is confided.—*Powles v. Dilley*, 9 Gill 222. (See *Same v. Same*, 2 Md. Ch. 119.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors; in 41 L. R. A. (N. S.) 3, on admissibility of vendor's declarations out of court, as to purpose in making transfer attacked as fraudulent.]

### § 51. Appointment of successor or receiver.

(a) In September, 1818, A., a resident of Baltimore, applied for the benefit of the insolvent laws under act 1816, c. 221. A provisional trustee was appointed, and A. received his personal discharge. In December following, two permanent trustees were appointed, who did not give bonds with security. The applicant having failed to receive his final discharge, died some time after, and the provisional trustee was appointed his administrator. One of the permanent trustees also died, and the other removed from the state. Upon application of the creditors, in 1829, another permanent trustee was appointed, who gave bond with security. Held, that the appointment was duly made, and that the administrator must deliver the property he received as provisional trustee to the permanent trustee.—*Glenn v. Karthaus*, 4 G. & J. 385. (See Code, art. 47, § 2.)

### (B) ASSIGNMENT, AND TITLE, RIGHTS, AND REMEDIES OF ASSIGNEE OR TRUSTEE IN GENERAL.

### § 52. Effect of appointment and qualification.

### § 53. Assignment and other transfers by insolvent to assignee or trustee.

(a) As Code 1888, art. 47, § 30, requires the insolvent to surrender his property to the trustees, and makes it the duty of the court to enforce the surrender by fine and imprisonment, the trustees have no right to relieve the insolvent from his duty.—*Cochrane v. Bridendolph*, 72 Md. 275, 19 Atl. 604. (See Code 1911, art. 47, § 30.)

(b) The trustees filed a petition stating that the insolvent had been imprisoned for refusing to turn over money that he had in

his possession; that he had agreed to turn over an amount equal to 50 per cent. of his indebtedness, also his real estate, if he could have two years in which to redeem it, by paying the remaining 50 per cent., and that certain parties would buy it, and give two years for redemption; also, that it was for the creditors' interest that the sale be made, and that there be a speedy settlement. Held, that the order of the court that the sale be made did not relieve the insolvent from surrendering the remainder of his property to the trustees.—*Cochrane v. Bridendolph*, 72 Md. 275, 19 Atl. 604.

(c) The title of the insolvent's trustee vests in him by operation of law, without the necessity of any deed.—*Phelps v. Phelps*, 17 Md. 120.

(d) An insolvent citizen of a foreign state executed in Maryland an assignment of certain property, and subsequently took the benefit of the insolvent laws of Maryland. Held, that such assignment is not a contract, within the operation of such insolvent laws.—*Union Bank v. Kerr*, 7 Md. 88.

(e) Where the Maryland statutes declare the deed of an insolvent fraudulent, although the Maryland courts cannot meddle with the property, while without that state, still in that state it is regarded as a part of the trust fund, and if it be brought into that state they will entertain a suit for it, and in deciding such suit will be governed by the statutes of Maryland, disregarding the *lex rei sitæ*.—*Gardner v. Lewis*, 7 Gill 377. [Cited and annotated in 25 L. R. A. 450, 451, 452, 460, on oral proof of foreign laws; in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(f) The deed of an insolvent debtor conveying his property to a trustee for the benefit of creditors under the usual order of court acknowledged before the clerk of the County Court is not properly acknowledged.—*Mackall v. Farmers Bank*, 12 G. & J. 176.

### § 54. Property and rights vesting in assignee or trustee.

#### Cross-References.

Insolvency of principal contractor affecting owner's right to pay mechanics' liens, see "Mechanics' Liens," § 240.

Transfer of patent on insolvency of patentee, see "Patents," § 204.

### § 55.—In general.

#### Cross-Reference.

Trade-mark as asset of insolvent's estate, see "Trade-Marks and Trade-Names," § 37.

(a) A person holding the legal title to a life policy had an interest therein of an undivided one-fifth, as legatee of the beneficiary, and a further interest to the extent of premiums paid by him under an agreement with the other legatees. *Held*, that his beneficial interests as well as the legal title passed to a trustee in insolvency for him, and the trustee was entitled to sue on the policy.—*McElvoy v. John Hancock Mut. Life Ins. Co.*, 88 Md. 137, 41 Atl. 112, 71 Am. St. Rep. 400. [Cited and annotated in 50 L. R. A. 46, on life insurance as assets of bankrupt or insolvent; in 41 L. R. A. (N. S.) 286, as to when delay in notice or proof of death under insurance policy excusable.]

(b) A will provided that the shares of testator's daughters should be held in trust during their respective lives, with remainder to their issue living at their death, and, in case any of the children of the daughters should die without issue before attaining majority, his share should pass to testator's heirs and distributees. *Held*, that the interest of an heir in the remainder devised to the children was such a contingent estate as could not be aliened by him, and on the death under age, without issue, of one of said children, his interest passed directly to the heir, and not to his trustee in bankruptcy; and this, though Code 1888, art. 47, § 2, provides that all the property and estate of every description, rights, and claims of an insolvent shall vest in his trustee.—*Godwin v. Banks*, 87 Md. 425, 40 Atl. 268; *Culbreth v. Godwin*, Id; *In re Banks' Will*, Id. (See Code 1911, art. 47, § 2.) [Cited and annotated in 25 L. R. A. (N. S.) 898, on character of remainder created by grant or devise for life, with remainder to children who may survive.]

(c) A permanent trustee, after his discharge, cannot claim property inherited by the insolvent pending the insolvent proceedings, and require such insolvent, after his discharge, to file a supplemental schedule including it.—*Culbreth v. Banks*, 87 Md. 444, 40 Atl. 170; *Dorsey v. Same*, Id.

(d) In ejectment, it appeared that plaintiffs' ancestor in 1773 deeded the land in question, in trust, for a religious society, for a burying-place, and also to erect thereon a house of worship; and that subsequently such ancestor became insolvent, and under act 1774, c. 28, all of his real and personal estate, "either in possession, reversion, remainder, or in trust, or in which he has any claim or interest which might be subjected to the payment of his creditors," vested in the sheriff, as assignee to sell and convey. *Held*, that the possibility of reverter in the original grantor and his heirs cannot be said to have been divested thereby, where there is no trace of any attempt by the assignee, who sold the real estate, to sell the possibility of reverter, and defendant has failed to establish the existence of an outstanding title to such possibility of reverter, or even to produce a deed or the record of a deed, or to designate a person as having acquired such title.—*Kelso v. Stigar*, 75 Md. 376, 24 Atl. 18. (See Code, art. 47, § 1.) [Cited and annotated in 19 L. R. A. 264, on condition in deed that land be used for specified charitable, public or quasi public purposes; in 21 L. R. A. 848, on effect of judgment on unauthorized appearance by attorney; in 11 L. R. A. (N. S.) 511, 519, on effect of specifying use of realty in devise to religious society.]

(e) Where an absolute deed by the insolvent to a third party is in fact a mortgage, the insolvent trustee will take the property in dispute into his exclusive possession and control, free from the interference of the mortgagee.—*Waters v. Rigin*, 19 Md. 536.

(f) A permanent trustee appointed on release of an insolvent becomes immediately vested with all the rights in law or in equity which the latter then possessed, and may enforce any right or make any defense which insolvent could have maintained or enforced at the time of the insolvency.—*Thomas v. Watson*, 9 Md. 536, note.

(g) Under act 1805, c. 110, § 5, where property was devised to one who had taken proceedings in insolvency, the devised property did not vest in his trustee, but was subject to the claim of any creditor exercising superior diligence in obtaining it; but by act 1834, c. 293, § 2, the law was changed so that the property vested in the trustee, and

thus secured an equal distribution among his creditors.—*Smith v. Donnell*, 9 Gill 84. (See Code, art. 47, § 2.)

(h) By the laws of Maryland all the property of an insolvent, wherever situated, is conveyed to the trustee, and, though other states may not so declare in regard to property for which the trustee brings suit in their courts, yet, if the property be brought back to Maryland, the courts of Maryland will regard it as a part of the trust fund, to which the trustee is entitled.—*Gardner v. Lewis*, 7 Gill 377. [Cited and annotated in 25 L. R. A. 450, 451, 452, 460, on oral proof of foreign laws; in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(i) Property acquired by an insolvent debtor, subsequently to his petition, by gift, descent, or in his own right by bequest, devise, or in the course of distribution, does not pass to his trustee.—*Hall v. Gill*, 10 G. & J. 325.

(j) A., who was B.'s guardian until 1817, received, in 1828, a sum of money as compensation for certain slaves, formerly the property of B. captured by the British in 1814. B. had petitioned for the benefit of the insolvent laws in 1822, and was discharged finally in 1823. C. was his permanent trustee, and to him A. paid the money. In an action by B. against C. for the money it was held that the permanent trustee was entitled to the funds.—*Plater v. Scott*, 6 G. & J. 116.

#### § 56.—Partnership and individual property.

(a) By act 1884, c. 295, the provisions of the insolvent law were extended to partnerships, and the effect of a petition by a partnership for the benefits of the insolvent act was to vest all the joint stock and property, together with all the separate estate of each partner, in a trustee in insolvency. Held, that, under this act, where one of two partners has absconded and left the state, the remaining partner cannot file a petition in his own name to procure for the partnership the benefit of the insolvent act, and thereby transfer the separate and individual property of the other partner, for distribution to a trustee among the creditors of the part-

nership.—*Second Nat. Bank v. Willing*, 66 Md. 314, 7 Atl. 558. (See Code 1911, art. 47, § 28.)

(b) The adjudication of a surviving partner as an insolvent debtor vests in his permanent trustee the firm assets.—*Pinckney v. Lanahan*, 62 Md. 447.

(c) Where complainant had become liable to the creditors of defendant as a partner, and had taken proceedings for a dissolution of the partnership and appointment of a receiver, and the court decided that no partnership existed between complainant and defendant, and after its decision defendant took proceedings in voluntary insolvency, and complainant also took such proceedings, the property of the business must be turned over to the trustees of defendant.—*Glenn v. Gill*, 2 Md. 1.

#### § 57. Title acquired by assignee or trustee.

*Cross-Reference.*

See ante, § 53.

#### § 58. Set-offs and counterclaims against assignee or trustee.

*Cross-Reference.*

In proceedings to establish claims against estate, see post, § 111.

#### § 59. Equities of third persons.

(a) Goods being sold on credit, and shipped to the buyer, and he becoming insolvent subsequent to the sale, but the goods not being stopped in transit, title vests in his assignee on delivery.—*McElroy v. Seery*, 61 Md. 389, 48 Am. Rep. 110.

#### § 60. Rights as to pending actions.

*Cross-Reference.*

Actions by or against insolvent, see post, § 145.

#### (C) PREFERENCES AND TRANSFERS BY INSOLVENT, AND ATTACHMENTS AND OTHER LIENS.

*Cross-References.*

Effect of preferences or transfers on validity of discharge granted, see post, § 153.

Preferences or transfers as acts of insolvency, see ante, § 25.

Preferences or transfers as ground for refusal of discharge, see post, § 150.

Right of transferee to prove claim against insolvent estate, see post, § 104.

As acts of bankruptcy, see "Bankruptcy," §§ 58, 59.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

By insolvent bank, see "Banks and Banking," §§ 74, 286.

By insolvent corporations in general, see "Corporations," §§ 544, 545.

Preference affecting validity of conveyance as to creditors, see "Fraudulent Conveyances," §§ 114-130.

### § 61. Preferences.

#### Cross-Reference.

See post, §§ 62, 63, 99.

#### Annotation.

Effect, under bankruptcy and insolvency laws, of creditors' participation in fraudulent intent of debtor in making transfer by way of preference.—31 L. R. A. 647, note.

(a) The fact that a preferred creditor of an insolvent was ignorant of the insolvency when the preference was given, and was ignorant of the fact that the payment was made as a preference, does not affect the applicability of Code 1888, art. 47, § 14, making such a preference void.—*Willison v. First Nat. Bank*, 80 Md. 196, 30 Atl. 749. (See Code 1911, art. 47, § 14.) [Cited and annotated in 31 L. R. A. 649, on participation in debtor's fraudulent intent, invalidating transfer; in 37 L. R. A. 348, on preference by mortgage or sale as assignment for creditors.]

(b) Under act 1890, c. 364, prohibiting preferences by merchants, etc., insolvent or contemplating insolvency, saving liens for money bona fide loaned and paid at the time, it is not enough to avoid a mortgage that the mortgagor was insolvent, if the mortgagee acted in good faith, and presently paid him the whole sum secured.—*Hinkleman v. Fey*, 79 Md. 112, 28 Atl. 886; *Fey v. Hinkleman*, Id. (See Code, art. 47, § 14.) [Cited and annotated in 31 L. R. A. 648, on participation in debtor's fraudulent intent invalidating transfer.]

(c) The reservation of a reasonable fee for the draftsman of the deed for its preparation is such a preference in a deed for the benefit of creditors as is forbidden by the insolvent act of 1884, and will render the deed void.—*Wolfsheimer v. Rivinus*, 64 Md. 230, 1 Atl. 128, 54 Am. St. Rep. 769. (See Code, art. 47, § 14.)

(d) Under the insolvent law of 1854, c. 193, a conveyance in trust for creditors with preferences is not void unless at the time of making it the grantor had no reasonable expectation of being exempted from liability

or execution on account of his debts without petitioning for the benefit of the insolvent laws.—*McColgan v. Hopkins*, 17 Md. 395. (See Code, art. 47, § 14.)

(e) An assignment of an insolvent debtor will not be set aside on proof of an intent to prefer alone; an intent to prefer and an intent to take advantage of the insolvent law must both be proved.—*Brooks v. Thomas*, 4 Md. Ch. 15. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(f) It is not enough to avoid a deed under the insolvent acts of 1812 and 1816 that the grantor was insolvent when the deed was executed, and that the grantee knew of such insolvency, but it is necessary that the undue preference should be given "with a view, or under an expectation at the time, of taking the benefit of the insolvent laws"; and a bill brought to vacate a deed under these acts should aver that undue preference was made with such view and expectation.—*Falconer v. Clark*, 3 Md. Ch. 151; *Same v. Griffith*, Id. (See *Same v. Same*, 7 Md. 177; Code, art. 47, §§ 8, 14.)

(g) Under act 1845, c. 139, § 2, relative to transfers by insolvent debtors, a transfer made at the request or on the demand of a creditor is void when made with a view to, and under an expectation of taking the benefit of the insolvent acts of 1812 and 1816 and with the intent to prefer the transferee.—*Falconer v. Clark*, 3 Md. Ch. 151; *Same v. Griffith*, Id. (See *Same v. Same*, 7 Md. 177; Code, art. 47, §§ 8, 14.)

(h) Under the insolvent law, a transfer to a favored creditor, to be void, must be made with a view of taking the benefit of the insolvent law, and also with intent thereby to give an undue and improper preference. *Held*, that, where a bona fide transfer was made to secure a creditor, and the debtor did not make application for the benefit of the insolvent law until more than two years thereafter, the transfer must be sustained.—*Powles v. Dilley*, 2 Md. Ch. 119. (See *Same v. Same*, 9 Gill 222.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

(i) A debtor reluctantly, and at the request of a creditor, assigned to the creditor certain property, and two years thereafter applied for and received his discharge under the insolvent laws. *Held*, that the assignment was not invalid, as made with the intention of preferring a creditor and receiving the benefits of the insolvent act.—*Powles v. Dilley*, 2 Md. Ch. 119. (See *Same v. Same*, 9 Gill 222.) [Cited and annotated, see *supra*.]

(j) To avoid a deed, under the acts of 1812, c. 77, and 1816, c. 221, it is necessary to show, not only that an undue and improper preference was given by the debtor, but also that this was done with a view or under an expectation of taking the benefit of the insolvent laws.—*Glenn v. Baker*, 1 Md. Ch. 73. (See Code, art. 47, §§ 8, 14.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(k) To render an assignment void under the insolvent laws the debtor must intend both to apply for the benefit of them, and to prefer the particular creditor or creditors; the guilty intent must concur in both particulars.—*Powles v. Dilley*, 9 Gill 222. (See *Same v. Same*, 2 Md. Ch. 119.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors; in 41 L. R. A. (N. S.) 3, on admissibility of vendor's declarations out of court, as to purpose in making transfer attacked as fraudulent.]

(l) The County Court instructed the jury that if they found that the debtor intended to transfer his property to a creditor by a certain agreement, and at the time of such agreement he had no reasonable expectation of being exempt from liability on execution for or on account of his debts, without applying for the benefit of the insolvent laws, and that the creditors at the time had notice of the debtor's condition of insolvency, then such a transfer was made under a view and intent of becoming an insolvent debtor, with intent thereby to give an undue and improper preference to such creditors, and vested in him no title to the property. *Held*, that this instruction was properly granted.—*Gardner v. Lewis*, 7 Gill 377. [Cited and annotated in 25 L. R. A. 450, 451, 452, 460, on oral

proof of foreign laws; in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(m) A deed cannot be condemned as having been made in expectation of becoming insolvent, and with intent to give a preference, under the insolvent laws existing anterior to the act of 1834, c. 293, unless the grantors, at the time of executing the deeds, contemplated taking the benefit of the insolvent laws.—*Cole v. Albers*, 1 Gill 412. (See Code, art. 47, §§ 8, 14.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(n) Where a debtor in a state of actual and total insolvency closed his business, and on the same day voluntarily transferred the whole of his property for the purpose of securing a portion of his creditors and indorsers, selected by himself, on notes not then due, to the exclusion of other creditors, on whose claims he was at any moment liable to be sued, and in 17 days afterwards took the benefit of the insolvent laws, without any attempt to prevent his being sued, or to compromise, or in any way to adjust, the claims of any of the other creditors, it was *held*, that, in the absence of all evidence to the contrary, he must be considered as having acted "under an expectation of becoming an insolvent debtor."—i. e. with an expectation and intention of taking the benefit of the insolvent laws, and with an intent "to give an undue and improper preference,"—and that the party to whom his property was so transferred must account with his permanent trustee, appointed under the insolvent laws.—*Dulaney v. Hoffman*, 7 G. & J. 170, 28 Am. Dec. 207. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(o) By act 1827, c. 70, § 7, judgments confessed by any person in favor of creditors with a view of becoming an insolvent debtor were declared improper preferences, within the act of 1805, except in the city and county of Baltimore; but by the act of 1830 (c. 65) and 1831 (c. 316, § 5) the same rule applies to such judgments in that city and county. Prior to 1827 such judgments had not been considered improper preferences, within the act of 1805.—*Hickley v. Farmers & Mer-*

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

*chants Bank*, 5 G. & J. 377. (See Code, art. 47, §§ 8, 9, 14.)

(p) Under the settled construction of the acts of 1812, c. 77, § 1, and 1816, c. 221, § 6, the words "with a view or under an expectation of being or becoming an insolvent debtor" are held to mean, with a view or under an expectation of taking the benefit of the insolvent laws.—*Hickley v. Farmers & Merchants Bank*, 5 G. & J. 377. (See Code, art. 47, §§ 8, 9, 14.)

(q) A transfer of property by a debtor to a creditor with view or under the expectation of becoming an insolvent is made void by act 1812, c. 77, § 1, only for the purpose of vesting the property in the trustee of such debtor for the benefit of his general creditors.—*Harding v. Stevenson*, 6 H. & J. 264. (See Code, art. 47, § 8, 14.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(r) To avoid a transfer made by a debtor as a fraudulent preference, it must have been made, not only in contemplation of insolvency, but with an intent to give an unlawful preference.—*Kennedy v. Boggs*, 5 H. & J. 403.

(s) Conveyances made to particular creditors, in contemplation of insolvency, were held to be "undue and improper preferences," and therefore void under the act of 1800, c. 44.—*Manro v. Gittings*, 1 H. & J. 492. (See Code 1911, art. 47, §§ 9, 14.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

## § 62. Transfers in general.

### Cross-Reference.

See ante, § 61; post, § 63.

(a) To avoid a transfer under the insolvent law it is necessary to establish that the debtor made the transfer voluntarily, and also with a view of taking the benefit of that law.—*Syester v. Brewer*, 27 Md. 288. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(b) Code 1860, art. 48, § 7, contemplates as void or voidable only such acts of a debtor in derogation of the rights of his creditors as may be done by him when he knows or believes himself to be insolvent, and has no reasonable expectation of exempting himself

from execution without the aid of the insolvent laws.—*Williams v. Cohen*, 25 Md. 486. (See Code 1911, art. 47, § 8.)

(c) The assignee in insolvency of one who becomes insolvent after making a valid assignment for creditors takes only the debtor's contingent interest in the surplus of the property. This is not sufficient to entitle him to possession of the property under the Maryland laws.—*McColgan v. Hopkins*, 17 Md. 395.

(d) The act of 1854, c. 193, makes void judgments, decrees, conveyances, and assignments for fraud, or for giving undue preferences, in cases of insolvency only where there has been a petition for the benefit of the act.—*Triebert v. Burgess*, 11 Md. 452; *Burgess v. Triebert*, Id. (See Code, art. 47, §§ 8, 9, 14.) [Cited and annotated in 2 L. R. A. (N. S.) 222, on uncertainty as to time as affecting right to specific performance; in 6 L. R. A. (N. S.) 588, on specific performance of contract to give security.]

(e) The act of 1834, c. 293, § 1, relative to conveyances by insolvents, is local in its operation, and confined to the city and county of Baltimore, and its proviso prevents its application to cases where the grantee had not notice of the insolvency of the grantor; and the notice which will vitiate the deed must be an actual notice, derived from a knowledge of the condition of the grantor.—*Cole v. Albers*, 1 Gill 412; *Falconer v. Clark*, 3 Md. Ch. 151; *Same v. Griffith*, Id. (See *Same v. Same*, 7 Md. 177; Code, art. 47, §§ 1, et seq.) [Cited and annotated, as to both cases, in 37 L. R. A. 473, 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(f) The notice which vitiates a conveyance under the act of 1834, c. 293, must be an actual notice, derived from a knowledge of the insolvency of the grantor.—*Cole v. Albers*, 1 Gill 412; *Preston v. Leighton*, 6 Md. 88. (For former appeal, see *Leighton v. Preston*, 9 Gill 201. See also, Code, art. 47, §§ 8, 14.)

(g) In a suit to avoid a deed as fraudulent under the insolvent laws, the complainant must allege and prove that the grantor was indebted at the time, and that he made it, or caused it to be made, with a view of taking

the benefit of the insolvent laws.—*Faringer v. Ramsay*, 4 Md. Ch. 33.

(h) Where an insolvent has made an absolute conveyance of property in the nature of a trust to secure an antecedent debt due to his grantee, it is the duty of his trustee in insolvency to administer upon such property.—*Bank of Westminster v. Whyte*, 3 Md. Ch. 508; *Whyte v. Fisher*, Id.

(i) The act of 1834, c. 293, relative to conveyances by insolvents, effected two alterations in the system, so far as the city and county of Baltimore are concerned. It invalidated the transfer, whether made upon request or not, and no such transfer could be made in favor of one creditor to the prejudice of the rest, if the debtor making it shall have had no reasonable expectation of being exempted from liability on execution for, or on account of, his debts, without applying for the benefit of the insolvent laws.—*Malcom v. Hall*, 1 Md. Ch. 172. (See Code, art. 47, §§ 8, 14. See also, *Malcolm v. Hall*, 9 Gill 177, 52 Am. Dec. 688.)

(j) A general assignment without preferences, even where the assignor one week later applied for the benefit of the insolvent law, is not void within act 1834, c. 293, declaring that all assignments made with intent to prefer any creditor, and with a view or under expectation of becoming an insolvent debtor, are void.—*Malcom v. Hall*, 1 Md. Ch. 172. (See Code, art. 47, §§ 8, 14. See also, *Malcolm v. Hall*, 9 Gill 177, 52 Am. Dec. 688.)

(k) A debtor in failing circumstances may prefer one creditor to another by a transfer of his property made in good faith, and that in similar circumstances a transfer by a debtor of his whole estate to trustees for the equal benefit of his creditors is free from objection.—*Malcolm v. Hall*, 1 Md. Ch. 172. (See *Malcolm v. Hall*, 9 Gill 177, 52 Am. Dec. 688.)

(l) The English distinctions between voluntary and involuntary transfers by bankrupts are recognized by the insolvent system, and to avoid such transfers for fraud upon that system they must be shown to be voluntary, as well as made with a view and under an expectation of taking the benefit of the insolvent laws.—*Malcom v. Hall*, 1 Md. Ch.

172. (See *Malcolm v. Hall*, 9 Gill 177, 52 Am. Dec. 688.)

(m) There must be found in the transfer or assignment an intention to prefer one creditor over another; or, notwithstanding the party had no reasonable expectation of escaping a recourse to the insolvent laws for relief, the transfer or assignment will stand, and a deed making no such preference will be held valid.—*Malcom v. Hall*, 1 Md. Ch. 172. (See *Malcolm v. Hall*, 9 Gill 177, 52 Am. Dec. 688.)

(n) An assignment for the benefit of all his creditors, though made in contemplation of taking the benefit of the insolvent laws, is valid, where no preferences are given in the assignment.—*Malcom v. Hall*, 1 Md. Ch. 172. (See *Malcolm v. Hall*, 9 Gill 177, 52 Am. Dec. 688.)

(o) A debtor assigned all of his property without restriction for the benefit of all of his creditors, and without preference, and within a few days thereafter applied for and received the benefits of the insolvent law. Held, that the assignment was not void as contravening the provisions of the insolvent law prohibiting assignments in contemplation of insolvency.—*Malcolm v. Hall*, 9 Gill 177, 52 Am. Dec. 688. (See *Malcom v. Hall*, 1 Md. Ch. 172.)

(p) The act of 1834, making void conveyances made by applicants for the benefit of the insolvent laws, does not apply to any case where the creditor or security receiving such conveyances shall appear not to have notice of the condition of insolvency of the debtor.—*Gardner v. Lewis*, 7 Gill 377. (See Code, art. 47, §§ 8, 14.)

(q) The payment of a debt in June, 1832, by parties at that time in failing circumstances, and who, in October of the same year, applied for the benefit of the insolvent law, was not void under the insolvent system as it then existed.—*Stewart v. Union Bank*, 7 Gill 439.

(r) Act 1812, c. 77, and act 1816, c. 21, though avoiding many acts done by an insolvent, do not include in the number an actual payment of money, bona fide due by him.—*Stewart v. Union Bank*, 7 Gill 439. (See Code, art. 47, §§ 8, 14.)



(s) Prior to the act of 1834, c. 293, payments eo nomine, by an insolvent debtor, no matter what his views or expectation might be, were not declared to be fraudulent or void.—*Stewart v. Union Bank*, 7 Gill 439. (See Code, art. 47, §§ 8, 14.)

(t) Where the grantor in a deed never becomes an applicant for relief under the insolvent laws, it cannot be pretended that his deed was made with a view of his becoming an insolvent debtor.—*Wheeler v. Stone*, 4 Gill 38.

(u) In order to avoid a conveyance by a debtor in failing circumstances to one or more creditors in satisfaction of their claims, under the insolvent laws, it is necessary to establish that the assignment was voluntarily made to prefer such creditors, and with a view or expectation of taking the benefit of the insolvent law; and an assignment is not voluntary which is made to a creditor urging payment, although the debt is not then due.—*Crawfords v. Taylor*, 6 G. & J. 323, 26 Am. Dec. 579. [Cited and annotated in 37 L. R. A. 473, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(v) An insolvent cannot set up his discharge under the insolvent law to defeat a transfer made by him prior to taking the benefit of the act.—*Dorsey v. Gassaway*, 2 H. & J. 402, 3 Am. Dec. 557.

(w) Act 1753, c. 36, providing that a conveyance by a nonresident shall be void unless the grantee gives bond to the creditors of the grantor, conditioned to satisfy claims to the value of the property conveyed, must be construed in connection with the act of 1704, c. 29, which limits it to conveyances made by bankrupt nonresidents.—*Ward v. Morris*, 4 H. & McH. 330. (See Code 1911, art. 47, §§ 8, 14.) [Cited and annotated in 14 L. R. A. 583, on constitutional equality of privileges; immunities and protection.]

### § 63. Fraudulent transfers.

#### Cross-References.

See ante, §§ 61, 62.

Validity of conveyances by insolvents and proceedings for avoiding them in general, see "Fraudulent Conveyances."

(a) Under Code 1888, art. 47, § 24, providing that any deed or lien given by certain persons when insolvent, or in contemplation of insolvency, shall be prima facie intended to defraud the grantor's creditors, a deed to

the grantor's sister, to pay or secure a pre-existing debt, made the day before he made an assignment for his creditors, is void as to such creditors.—*Applegarth v. Wagner*, 86 Md. 468, 38 Atl. 940. (See Code 1911, art. 47, § 24.)

(b) Code 1888, art. 47, § 24, as amended by act 1896, c. 446, which provides that any conveyance made when the grantor is insolvent, or in contemplation of insolvency, shall be held prima facie intended to delay and defraud creditors of the grantor, is operative alike in the insolvent court and in a court of law and of equity.—*Vogler v. Rosenthal*, 85 Md. 37, 36 Atl. 650, 60 Am. St. Rep. 298. (See Code 1911, art. 47, § 24.)

### § 64. Liens in general.

#### Cross-Reference.

Tender by assignee of amount due on mortgage, see "Mortgages," § 302.

(a) A verbal agreement between the parties to a mortgage, made at the time of its execution, that after-acquired chattels should be subject to the mortgage, is not available as a defense to trover by the insolvent trustee of the mortgagor to recover such chattels from the mortgagee, since, if the agreement gave the mortgagee a lien on them, it is enforceable only in the insolvent court, where the entire property of an insolvent must be administered.—*Crocker v. Hopps*, 78 Md. 260, 28 Atl. 99.

(b) Where a mortgage is recorded less than four months before insolvency proceedings are begun by a creditor, the jurisdiction of the insolvent court to pronounce it an act of insolvency is complete; and where the mortgagee does not intervene to protect his mortgage, nor appeal from the adjudication, the effect is to strike down the mortgage, and make it void, without any further proceedings to that end.—*Baker v. Kunkle*, 70 Md. 392, 17 Atl. 383.

(c) Though, as a general rule, a trustee of an insolvent mortgagor will supersede the conventional trustee named in the mortgage, yet, if there is any dispute or litigation as to his title over the property mortgaged, the conventional trustee may act under the power in the mortgage, and sell the same.—*Ensor v. Keech*, 64 Md. 378, 1 Atl. 756.

(d) Though property not sold at the time of an insolvent's application will pass to his assignee in insolvency, yet where a sale has been actually made under a good mortgage or decree, before the application, the rights of the purchaser will be sustained, though the insolvency intervene before the final ratification of the sale by the court.—*White v. Malcolm*, 15 Md. 529.

(e) Rent can be said in no sense to have the attributes of a lien, and defeat so far the operation of the insolvent laws, unless goods on the premises have been seized as a distress before the debtor's application.—*Buckey v. Snouffer*, 10 Md. 149, 69 Am. Dec. 129.

§ 65. (Omitted from the classification used herein.)

§ 66. Liens acquired by legal proceedings.

§ 67.— In general.

(a) A receiver in equity, by order of the court, sold property of the defendant. While the proceeds of sale were in the receiver's hands, the defendant obtained the benefit of the insolvent laws, and the receiver was appointed his trustee in insolvency. From an order of the court of equity requiring the receiver to bring the fund into court, defendant appealed on the ground that the case abated by defendant's insolvency, and after the appointment of a trustee the fund passed into his hands as such, and the jurisdiction of the equity court ceased eo instanti. Held, that the policy of the insolvent laws of Maryland does not debar the court in which the fund is found at the moment of insolvency from taking all steps necessary to its preservation.—*Henry v. Kaufman*, 24 Md. 1, 87 Am. Dec. 591.

§ 68.— Attachment or garnishment.

*Cross-References.*

See ante, § 4.

Effect of stipulation, see "Stipulations," § 17.

(a) A landlord who fails to distrain for rent until after the tenant has applied for the benefit of the insolvent laws acquires no lien or priority by a subsequent levy or distress.—*Fox v. Merfeld*, 81 Md. 80, 31 Atl. 583.

(b) Code 1888, art 47, § 11, which provides that the estate of an insolvent shall be distributed according to the principles of equity and no creditor shall acquire a lien by fi. fa. or attachment unless the same be levied before the filing of "his petition," applies to cases of both voluntary insolvency, where the application is made by the debtor, and involuntary insolvency, where the application is made by the creditor.—*Gottschalk v. Smith*, 74 Md. 560, 22 Atl. 401. (See Code 1911, art. 47, § 11.) [Cited and annotated in 26 L. R. A. 595, 597, on right to attach property in hands of assignee for creditors.]

(c) The fact that an attaching creditor, before insolvency proceedings against his debtor and the appointment of trustees in insolvency of the debtor's property, has laid his attachment in the hands of an assignee for the benefit of creditors of his debtor, does not entitle him, on the setting aside of the assignment, to prosecute the attachment to final judgment to perfect the inchoate lien acquired by the attachment. On the qualification of the trustees all the debtor's assets vest in them, leaving nothing in the hands of the assignee liable to condemnation.—*Buschman v. Hanna*, 72 Md. 1, 18 Atl. 962.

(d) Where a creditor attaches property in the hands of an assignee for the benefit of creditors, and the assignment is set aside, and the assets turned over to trustees in insolvency, the attaching creditor's inchoate lien will be protected by the insolvent court in the insolvency proceeding.—*Buschman v. Hanna*, 72 Md. 1, 18 Atl. 962.

(e) The insolvent law, declaring that "no creditor shall acquire a lien of fieri facias or attachment unless the same be levied before the filing of the petition," includes attachments levied on mesne process before the filing of the petition.—*Thomas v. Brown*, 67 Md. 512, 10 Atl. 713.

(f) A levy of an attachment on mesne process constitutes a valid lien, and is not impaired by a proceeding in insolvency afterwards begun.—*Thomas v. Brown*, 67 Md. 512, 10 Atl. 713.

(g) An adjudication of insolvency vesting the insolvent's assets in his trustee is a bar to an attachment issued subsequent to the

insolvency proceedings, even by the citizen of another state.—*Pinckney v. Lanahan*, 62 Md. 447.

(h) In providing that judgment creditors may take in execution property of the insolvent not mentioned in the schedule, and thereby acquire priority in the proceeds of such property, Code 1860, art. 48, means creditors who have obtained judgments against the insolvent prior to the filing of his petition, because, under the plea of discharge in insolvency, no judgment can be recovered against him.—*Becker v. Whitehill*, 55 Md. 572. (See Code 1911, art. 47, § 17.)

(i) Under act 1827, c. 70, § 8, giving a creditor who discovers property which an insolvent has failed to include in his schedule of insolvency a lien thereon, where judgments were recovered against G. in 1843, and the land was not sold under fi. fa. issued thereon for want of buyers, and in 1847 G. applied for the benefit of insolvent laws, and a trustee was duly appointed and qualified, and subsequently writs of venditioni exponas were issued on the fi. fa., a sale of G.'s property not included in his schedule of insolvency, under such writs, conferred no title, since the statute protects the lien only in case the writs were levied prior to the application in insolvency.—*Manahan v. Sammon*, 3 Md. 463. (See Code, art. 47, §§ 1, 17.)

(j) In 1839, A. conveyed to B. and C. property in trust to pay his creditors, of which property he retained possession, and the rents and profits of which he was to hold and enjoy, until the sale thereof by the trustees. In 1840, B. applied for relief under the insolvent laws. He executed a deed of all his property to D. under that application, but omitted, in his schedule of effects, to take any notice of rent due him on account of a parcel of land conveyed to B. and C. In 1842, an attachment in virtue of a judgment recovered against A. in 1839 was laid in the hands of E., the garnishee. The garnishee admitted a balance of rent due A., arising out of grain grown on the lands in question, but did not state when he had rented, or when the rent became due. *Held*, that if the rent due from the garnishee accrued after the deed to D., and out of the land mentioned in the deed and schedule, it belonged to the

trustee under the insolvent law, but if the rent accrued to A. before his application for relief, in 1840, as it was not mentioned or included in his schedule of effects, then under act 1827, c. 70, § 7, it was liable to be attached by plaintiff.—*Hupè v. Seibert*, 4 Gill 240. (See Code, art. 47, §§ 1, 17.)

(k) No lien is acquired on the property of an insolvent by an execution placed in the hands of the sheriff after the insolvent's estate is transferred to the trustee.—*Selby v. Magruder*, 6 H. & J. 454.

### § 69.—Judgment or execution and proceedings thereon.

#### Cross-Reference.

Duty of assignee to appoint appraisers of insolvent's property, see "Execution," § 141.

(a) Judgments were recovered against G. in 1843, on which fi. fas. were issued in 1844, and returned levied. On January 7, 1847, G. applied for the benefit of the insolvent laws, and his trustee was duly appointed and qualified. In February, 1847, writs of vendi. exponas on these fi. fas. were issued under which the property was sold in May following by the sheriff at public sale. *Held*, that the insolvent application transferred to the trustee the sole and exclusive right of selling the property, notwithstanding the fi. fas. previously levied; that, the sheriff having no right to sell, his proceedings were null and void; and that the sale by him passed no title to the purchaser.—*Manahan v. Sammon*, 3 Md. 463.

(b) Where, prior to the assignment of an estate in insolvency, an execution is placed in the hands of the sheriff, who returns it levied for a part of the debt, and reports that the rest of the debtor's property is secreted, a valid lien is acquired on the whole estate.—*Selby v. Magruder*, 6 H. & J. 454.

### § 70.—Proceedings in other states or countries.

#### Cross-References.

Effect of discharge of insolvent on non-resident, see post, § 162.

Effect of foreign discharge, see post, § 163.

### § 71. Dissolution of liens or attachments and other proceedings by adjudication.

#### Cross-References.

Operation and effect of discharge of insolvent, see post, § 160.

Computation of time between levy and insolvency proceedings, see "Time," §§ 9, 11.

Laws impairing vested rights, see "Constitutional Law," §§ 106, 161.

(a) Insolvency proceedings do not dissolve an attachment levied before such proceedings were begun, unless the insolvent law expressly declares them to be dissolved thereby.—*Thomas v. Brown*, 67 Md. 512, 10 Atl. 713.

## § 72. Remedies to establish or enforce rights or liens.

### Cross-Reference.

Operation and effect of discharge of insolvent, see post, § 160.

(a) A fraudulent conveyance by one who has since gone into insolvency can be set aside at a suit of the creditors, the trustee being joined therein as a defendant, as well as in an action brought by the trustee; the latter's rights not being prejudiced in a court of equity.—*Haugh v. Maulsby*, 68 Md. 423, 14 Atl. 65.

(b) The trustee in insolvency of the mortgagor is the only person empowered to sell the mortgaged premises, although the mortgage contains a power of sale.—*Mackubin v. Boarman*, 54 Md. 384.

## (D) ADMINISTRATION OF ESTATE.

## § 73. Jurisdiction of courts.

### Cross-Reference.

Appellate jurisdiction, see post, § 173.

(a) The Circuit Court, acting as an insolvent court, has no jurisdiction to subject property inherited by the insolvent pending the insolvency proceedings to the payment of a judgment rendered against the insolvent before the proceedings began.—*Culbreth v. Banks*, 87 Md. 444, 40 Atl. 170; *Dorsey v. Same*, Id.

(b) The Court of Common Pleas of the City of Baltimore has exclusive jurisdiction of insolvent proceedings in that city, and an order of that court, granting leave to file a bill of interpleader in the Circuit Court to determine the rights of several claimants to an insolvent's estate, was without authority, and the Circuit Court acquired no jurisdiction.—*Cross v. Hecker*, 75 Md. 574, 24 Atl. 99.

(c) The jurisdiction of the Circuit and Common Pleas Courts over insolvency proceedings is of a limited nature, being prescribed by statute; and they have no power to grant injunctions in such proceedings, except in the single instance provided for by act 1880, c. 172, where an inquiry is instituted to determine the insolvency of a debtor, and it is desired to protect the property in the meantime. They have no jurisdiction, at the suit of the trustee, to enjoin a sale of the insolvent's property on a distress for rent by his landlord.—*Paul v. Locust Point Co.*, 70 Md. 288, 17 Atl. 77. (See Code 1911, art. 47, § 23.)

§§ 74-76. (See Analysis.)

## § 77. Proceedings in cause after adjudication.

(a) A decree in insolvency proceedings against a husband setting aside, as an unlawful preference, a mortgage made by him and his wife to secure a note executed by them, does not have the effect of declaring the note invalid.—*Frederick Town Sav. Inst. v. Michael*, 81 Md. 487, 32 Atl. 189, 340, 33 L. R. A. 628.

## § 78. Authority and functions of assignee or trustee in general.

### Cross-References.

Duty to appoint appraiser of insolvent's property seized prior to assignment, see "Execution," § 141.

Tender of amount due on mortgage, see "Mortgages," § 302.

§§ 79, 80. (See Analysis.)

## § 81. Custody and management of estate.

(a) The act of 1805, and its supplements, require the trustee of an insolvent debtor to take into his possession all the estate and effects to which the insolvent had the right of possession at the time of his application, and to sell and dispose of all his property in possession, reversion, or remainder, and pay off the liens and incumbrances thereon, and to regard an execution as a lien upon personal property only in the case where it was actually levied before the insolvent's petition, and it secures to the execution creditor whose execution has been so levied a priority over all judgments not in the same condition, by making his debt a specific lien on the prop-

erty seized in execution; but the law has given to the trustee the entire management of the estate, subject to the control of the court by whom he is appointed, charging him with the duty of paying off liens and incumbrances to which the estate might be subject.—*Alexander v. Ghiselin*, 5 Gill 138. (See Code, art. 47, §§ 1, et seq.) [Cited and annotated in 30 L. R. A. 125, on injunction against execution sales or other proceedings under final process.]

## § 82. Sale or other disposition of assets.

### Cross-References.

Appeal from order confirming sale, see post, § 178.

Limitation of actions for fraud in sale, see "Limitation of Actions," § 102.

Sale under insolvency proceedings as barring dower, see "Dower," § 46.

What constitutes sale at auction, see "Auctions and Auctioneers," § 7.

(a) Where leasehold property subject to a mortgage is sold by the trustees in insolvency of the owner of such property, the taxes and ground rent due thereon are payable out of the proceeds of sale, though such proceeds are insufficient to satisfy the mortgage.—*Stewart v. Clark*, 60 Md. 310.

(b) Where an insolvent holds the equitable title to land, the court before which the insolvency proceedings are pending has no jurisdiction to determine the nature and extent of his interest in the property; and the insolvent trustees can sell only the equitable title of the insolvent, leaving the purchasers to assert in a proper forum their rights against those holding the legal title.—*Gable v. Scott*, 56 Md. 176.

(c) It is a valid objection to a sale made by trustees in insolvency that it was made without a previous order of court.—*Gable v. Scott*, 56 Md. 176.

(d) A. went into insolvency and conveyed his property to the trustee appointed by the court. The trustee made sale of the property under order of court, and the same was ratified nisi. Held, in the absence of proof that the sale was unfairly conducted, or that more could be obtained for the property, a ratification would not be refused at the instance of insolvent, unless all the creditors and the trustee consented, or unless provisions could be made for their payment in full.—*McHenry v. McVeigh*, 56 Md. 578.

[Cited and annotated in 19 L. R. A. (N. S.) 683, on right of assignor to complain of sale made by assignee for creditors.]

(e) Where, on the sale of a debtor's property, the purchaser fails to comply with his bid, and a resale is had, and the creditors are thereby delayed in the payment of their claims, they are entitled to interest on the price of the first sale from the time the money was due thereunder until the date of the second sale.—*Gordon v. Matthews*, 30 Md. 235.

(f) Where a trustee in insolvency sells real estate of the insolvent, and the purchaser fails to comply with his bid, and the court orders a resale, such order does not vacate the original sale, so as to release the purchaser; and he will be liable for any deficiency in the price on the second sale.—*Gordon v. Matthews*, 30 Md. 235.

(g) Act 1854, c. 193, gives as full powers to the assignee of an insolvent to sell his whole property as those in the act of 1805, unless property conveyed in trust before the petition provided for in § 13 be an exception.—*Zeigler v. King*, 9 Md. 380. (See Code, art. 47, §§ 1, 2, 14.)

(h) Where a deed executed in violation of the insolvent law is vacated, the title vests in the trustee in insolvency, who is the party to make sale of the property under the direction of a court of law.—*Jamison v. Chesnut*, 8 Md. 34. [Cited and annotated in 10 L. R. A. (N. S.) 307, on right of bankrupt's creditor to set aside transfer in fraud of creditors.]

(i) It is the duty of the trustee of an insolvent debtor to sell property of the insolvent free of all liens, reserving the settlement of priorities until the final distribution of the fund.—*Eschbach v. Pitts*, 6 Md. 71. [Cited and annotated in 35 L. R. A. 60, on personal liability to pay assessment for local improvement; in 35 L. R. A. 375, on superiority of local assessment over prior lien.]

(j) It is the right and duty of the trustee in insolvency to sell the mortgaged property of his insolvent, and pay off the liens and incumbrances thereon.—*Bank of Westminster v. Whyte*, 1 Md. Ch. 536.

(k) Where the land of an insolvent debtor, who was discharged under the insolvent law of 1774, was sold and conveyed by the sheriff,

the sale was *held* good, although the schedule transmitted by the justices to the clerk of the county was not signed by the insolvent or the justices.—*Chaplin's Lessee v. Shoot*, 3 H. & McH. 350. (See Code, art. 47, § 5.)

### § 83. Contracts, investments, and expenditures.

(a) A trustee in insolvency cannot employ a professional advisor and charge his compensation to the estate; but, where the assistance of counsel is required in prosecuting or defending the interests of the creditors, they are properly payable out of the funds.—*Nelson v. Pierson*, 8 Md. 300.

### §§ 84-89. (See Analysis.)

#### (E) ACTIONS BY OR AGAINST ASSIGNEE OR TRUSTEE.

##### *Cross-References.*

Actions by creditors in aid of proceedings, see ante, § 72.

Actions by or against provisional receiver, see ante, § 42.

Actions on bond, see post, § 136.

Rights as to pending actions, see ante, § 60.

Laches in attacking fraudulent conveyance to trustee, see "Fraudulent Conveyances," § 249.

### § 90. Actions by assignee or trustee.

##### *Cross-References.*

Garnishment or trustee process as remedy for recovery of preference, see "Garnishment," § 4.

Title or possession of assignee to support replevin, see "Replevin," § 8.

(a) Though all the trustees of an insolvent should ordinarily unite in judicial proceedings, yet where one of the trustees was an executor and distributee of an estate in which his insolvent was also a distributee, and such trustee was acting against the interests of his insolvent, it was proper for the court, in a matter involving the insolvent's rights as distributee, to act at the instance of the remaining trustees.—*Hoffman v. Armstrong*, 90 Md. 123, 44 Atl. 1012. [Cited and annotated in 26 L. R. A. (N. S.) 414, 415, 416, on effect on debt of appointment of debtor as executor or administrator.]

(b) A trustee in insolvency may maintain a bill to vacate a deed as in fraud of grantor's creditors.—*Applegarth v. Wagner*, 86 Md. 468, 38 Atl. 940.

(c) A court of equity has jurisdiction of a suit by a trustee in insolvency to set aside a conveyance by his insolvent as in fraud of creditors.—*Manning v. Carruthers*, 83 Md. 1, 34 Atl. 254. [Cited and annotated in 56 L. R. A. 825, on burden of proof of husband's debt to wife for property received from her.]

(d) The assignee or trustee can bring suit to set aside fraudulent conveyances made by the insolvent.—*Gardner v. Lewis*, 7 Gill 377. [Cited and annotated in 25 L. R. A. 450, 451, 452, 460, on oral proof of foreign laws; in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.] *Waters v. Dashiell*, 1 Md. 455; *Diggs v. McCullough*, 69 Md. 592, 16 Atl. 453. [Cited and annotated in 20 L. R. A. 110, on parol evidence as to consideration of deed.]

(e) A trustee in insolvency may restrain by injunction attaching creditors from interfering with property conveyed by the debtor, professedly for the benefit of his creditors, but, in fact, in fraud. The title in such case vests, not in the grantee, but in the trustee in insolvency.—*Lynch v. Roberts*, 57 Md. 150.

(f) A complainant averred his appointment as trustee in insolvency of B., who had executed to him a deed of all his property; that B. executed to a third person a bill of sale of a part of his property to secure a loan, which bill of sale was absolute, but intended as a mortgage, with the understanding that, if such third person should find it necessary to sell the property, he should account to B. for the proceeds after the payment of his debt; that B. was permitted to retain possession of the property until his application in insolvency; that after the execution of the bill of sale, but before it was recorded, creditors of B. obtained judgment and levied execution on the property conveyed without knowledge of the bill of sale, while the property was in possession of B., which levies were unsatisfied; and that after the application in insolvency such third person took possession of the property, claiming it, sold a part of it, and refused to account in conformity with the agreement. The bill prayed that such third person should be ordered to account with B. for the proceeds of the sale. *Held*, that the allegations were sufficient to give jurisdiction to a court of equity, and, on proof, to entitle the complainant to relief.—*Grove v. Rentch*, 26 Md. 367.

(g) Where the maker of notes, one of which was given on a usurious and the other on a gambling consideration, confessed judgments thereon, his permanent trustee for the benefit of creditors was entitled to an injunction against the enforcement of the judgments.—*Thomas v. Watson*, 9 Md. 536, note.

(h) The permanent trustee of an insolvent debtor has the right to file a bill to set aside conveyances made by his insolvent as fraudulent, at common law or under the statute of Elizabeth, against creditors.—*Atkinson v. Phillips*, 1 Md. Ch. 507. (See Alex. Brit. St. [Coe's ed.] 378, 555.)

(i) In trover brought by the trustee of an insolvent to recover goods fraudulently obtained from such insolvent, it is not essential to a recovery that the trustee should pay or tender to the defendant the money he paid to the insolvent at the time the fraudulent agreement was entered into as a consideration therefor.—*Gardner v. Lewis*, 7 Gill 377. [Cited and annotated, see supra.]

(j) A violation of the insolvent laws by a transfer of property under an expectation, on the part of the assignor, of being or becoming an insolvent debtor, and with intent to give an undue and improper preference to a creditor, is, in contemplation of law, a fraud upon the insolvent system, and, as such, within the jurisdiction of the Court of Chancery, so that the permanent trustee of an insolvent debtor, appointed under the insolvent laws, may maintain a bill against his assignee to account for and pay over the proceeds of the property assigned.—*Dulaney v. Hoffman*, 7 G. & J. 170, 28 Am. Dec. 207. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

#### § 91. Actions against assignee or trustee.

(a) Creditors may sue in their own behalf to cancel fraudulent conveyances made by the debtor to his trustee in insolvency before he became insolvent.—*Preston v. Horwitz*, 85 Md. 164, 36 Atl. 710.

#### § 92. Defenses against assignee or trustee.

(a) Proof that the creditors of an insolvent estate agreed, for certain money and lands, to release the insolvent and the trustees in

insolvency from all claims, and to allow insolvent's debtor to retain certain money due insolvent, will not bar recovery by the trustees against such debtor, as the trustees are vested with, and entitled to receive, the whole of the insolvent estate, and the creditors have no authority to interfere with it.—*Cochrane v. Bridendolph*, 72 Md. 275, 19 Atl. 604.

#### §§ 93-95. (See Analysis.)

#### § 96. Joinder or intervention in actions by insolvent or others.

(a) The trustee of an insolvent debtor is a necessary party to a bill filed by creditors to vacate a fraudulent conveyance made by an insolvent before his application.—*Swan v. Dent*, 2 Md. Ch. 111.

#### § 97. Process and appearance.

#### § 98. Pleading.

#### § 99. Evidence.

(a) Evidence is insufficient to show that a conveyance was voluntary, and with a view of taking advantage of the insolvency act, where it was made in consideration of payments made by the grantee for the grantor, which, with advances made, amounted to the full value of the real estate conveyed.—*Syester v. Brewer*, 27 Md. 288. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(b) In an action by a trustee in insolvency for conversion of insolvent's property, evidence by the defendant to prove that before the insolvent's application for the benefit of the insolvent law the property alleged to be converted was delivered by the insolvent to the defendant, and held by him as security for the insolvent's indebtedness to him, is admissible.—*Dowler v. Cushwa*, 27 Md. 354.

(c) Direct evidence is not necessary to enable a trustee to set aside an assignment of his debtor, but he may rely on facts and circumstances to show the intent with which it was made. But when, by answer or evidence, the debtor denies the intent attributed, very strong evidence is necessary to countervail such answer or evidence.—*Brooks v. Thomas*, 4 Md. Ch. 15. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(d) A. and B., partners, being indebted to Union Bank in the sum of \$5,000, on the 21st of February, 1832, gave their note for the same at 60 days, in the partnership name, payable to the bank in its corporate name, which was secured by the pledge of 64 shares of the stock of the bank, standing in the name of C. This not being paid at maturity, and the partnership in the meantime being dissolved, on the 24th of April they gave a new note in their individual names, payable to the cashier of the bank at 28 days, which became due 25th of May, and on the 25th June, 1832, was paid by C. with money which he admitted, in his answer, he received from A. and B. two days before; but, as he averred, with no knowledge of their business or indebtedness. A. and B. petitioned for the benefit of the insolvent laws in September and October, 1832. The complainant sought the repayment of this \$5,000 on the ground that it was paid to the bank in fraud of those laws. A., the only witness in the case, proved that about 21st May, 1832, when they had not available means to pay their debts, an arrangement was made by him, B. and clerk, and C. to pay the bank the note in question out of bills due the firm, and that witness objected to this arrangement, because they expected to compound with their creditors, and he did not wish to give a preference to one over another, but to make an equal distribution of assets among their creditors. *Held*, that this proof was not sufficient to establish that this preference was given with a view and under any expectation on the part of A. and B. of taking the benefit of the insolvent laws, and was not, therefore, void under the insolvent system of Maryland.—*Stewart v. Union Bank*, 2 Md. Ch. 58.

(e) Since at common law a debtor in failing circumstances has an unquestionable right to secure one creditor to the exclusion of others, either by payment or a bona fide transfer of his property, the onus probandi is upon the party who seeks to disturb such preference to show that it is prohibited by the insolvent system of the state,—*Stewart v. Union Bank*, 2 Md. Ch. 58.

(f) The fact that a party preferring his creditors, when he executed the deed, could

not apply for the benefit of the insolvent laws, for want of the residence required to bring him within their provisions, is a strong circumstance to show that it was not in his view and expectation at that time to take the benefit of such laws.—*Glenn v. Baker*, 1 Md. Ch. 73. [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors.]

(g) Under the provisions of the insolvent law declaring a transfer to a creditor void if made by the debtor with intent to apply for the benefit of the insolvent laws, and to prefer the particular creditor or creditors, the intent of the debtor may be shown by circumstances as well as by direct proof.—*Powles v. Dilley*, 9 Gill 222. (See *Same v. Same*, 2 Md. Ch. 119. See also Code, art. 47, §§ 8, 14.) [Cited and annotated in 37 L. R. A. 474, on effect of insolvency statutes on mortgage or sale preferring creditors; in 41 L. R. A. (N. S.) 3, on admissibility of vendor's declarations out of court as to purpose in making transfer attacked as fraudulent.]

(h) The permanent trustee of an insolvent debtor filed a bill to set aside a judgment confessed by the insolvent before applying for a release under the insolvent laws, alleging that it was intended to give the plaintiff an undue and improper preference, and that the debtor then contemplated applying for the benefit of the insolvent laws. The trustee made the debtor a witness, who swore that he did not confess the judgment with a view of taking the benefit of the insolvent laws; and, there being no opposing evidence on the record, it was *held* that the transaction was not avoided by the insolvent laws, and being bona fide, and for a valuable consideration, was good at common law, and must be sustained.—*Hickley v. Farmers & Merchants Bank*, 5 G. & J. 377.

(i) Entries in the daybook of insolvents, showing delivery of goods and notes to various persons, are competent evidence on the question of transfers being made in expectancy of insolvency as part of the *res gestæ*.—*Kolb v. Whitely*, 3 G. & J. 188. [Cited and annotated in 41 L. R. A. (N. S.) 5, 7, on admissibility of vendor's declarations out of court as to purpose in making transfer attacked as fraudulent.]

(j) In an action by a trustee of an insolvent debtor, in New Jersey, the plaintiff,



under the general issue, must prove his authority, by producing all the proceedings, the production of the commissioner's certificate, and the final discharge of the insolvent, not being of themselves sufficient; and the plaintiff must establish his right to sue in such capacity by the production of the bond itself.—*Winchester v. Union Bank*, 2 G. & J. 73, 19 Am. Dec. 253.

(k) The certificate of discharge in insolvency is of itself evidence of the facts it contains, and a party claiming thereunder is not compelled to prove such facts by evidence aliunde.—*Winingder v. Diffenderffer's Lessee*, 5 H. & J. 181.

### § 100. Trial.

(a) An instruction that the trustee of an insolvent could not recover against a vendee of goods unless the jury were satisfied that the sale was void by the insolvent laws would be erroneous, for it might be void by the statute of Elizabeth.—*Dietus v. Fuss*, 8 Md. 148. (See Alex. Brit. St. [Coe's ed.] 378, 555.)

### § 101. Judgment and enforcement thereof.

(a) Where an insolvent conveyed lands to his mother, and afterwards applied for the benefit of the insolvent laws, upon a bill in equity to set aside the conveyance as fraudulent, the deed was vacated. It appeared that before the suit was instituted the trustee of the insolvent had died, and no successor had been appointed in his stead. Held, that it was not within the power of a court of equity to direct, in the decree vacating the deed, the sale of the property by a trustee of its own selection.—*Jamison v. Chesnut*, 8 Md. 34. [Cited and annotated in 10 L. R. A. (N. S.) 307, on right of bankrupt's creditor to set aside transfer in fraud of creditors.]

### § 102. Review.

### § 103. Costs.

### (F) CLAIMS AGAINST AND DISTRIBUTION OF ESTATE.

#### Cross-References.

Appeal from proceedings, see post, §§ 173-178.

Claims against insolvent banks, see "Banks and Banking," § 80.

Claims against insolvent corporations in general, see "Corporations," § 565.

Claims against insolvent estates of decedents, see "Executors and Administrators," §§ 415-418.

Claims against insolvent insurance companies, see "Insurance," § 51.

Parol power to assign claim against insolvent, see "Principal and Agent," § 12.

Presentation of claim as election against other remedy, see "Election of Remedies," § 7.

### § 104. Creditors entitled to prove claims.

(a) Where notes of an insolvent are purchased by an agent of an indorser at a discount, for the benefit of such indorser, the latter is not entitled to dividends as a creditor.—*Woodville v. Reed*, 26 Md. 179. [Cited and annotated in 35 L. R. A. (N. S.) 33, on payment by commercial paper.]

### § 105. Claims provable.

### § 106. Amount of claims.

### § 107.— In general.

(a) The notes of A. & Co. were discounted at the Union Bank for the accommodation of B. and C., the indorsers. The real estate of B., one of the partners, was, after his death, sold under a decree, on the ground that the partnership property was insufficient for the payment of the debts of the firm. The bank retained, in part payment of its claim, a sum of money standing on its books to the credit of B. and C. on account. It also received another sum from the executors of C., the proceeds of the sale of lands pledged by him for the partnership debts to the bank, and further sums from A. & Co. Held, that the bank was entitled to a dividend from the proceeds of the sale of B.'s real estate on the balance of its claim, after deducting the aforesaid payments.—*Union Bank v. Cochran*, 7 G. & J. 138.

### § 108.— Secured claims.

#### Cross-References.

Effect of discharge of insolvent on securities and liens, see post, § 160.

Effect of sale of mortgaged property pending proceedings, see ante, § 43.

### § 109.— Interest.

(a) Where money due is not wrongfully withheld, but the failure to pay is due to insolvency only, interest will not necessarily be allowed on claims against the insolvent.—*Boston & A. R. Co. v. Mercantile Trust*

& *Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Co's Case*, Id. [Cited and annotated in 46 L. R. A. (N. S.) 187, on right of receiver to insurance funds deposited with state official; in 55 L. R. A. 50, on set-off in bankruptcy; in 19 L. R. A. (N. S.) 640, on right to return of premiums on adjudication of insurer.]

#### § 110.—Costs.

(a) When the trustee in insolvency refuses, upon the application of the creditors, to institute proceedings to set aside a conveyance from the insolvent, as being in fraud of creditors, and one of the creditors, in behalf of himself and others, files a bill for that purpose, and employs counsel to prosecute the suit, and the conveyance is finally set aside, the fee charged by the counsel so employed should be allowed out of the insolvent estate.—*In re Leiman's Estate*, 32 Md. 225, 3 Am. Rep. 132. [Cited and annotated in 26 L. R. A. 737, on interruption of limitations by insolvency assignment; in 54 L. R. A. 818, on fees out of fund for attorneys of creditors suing in behalf of themselves and others.]

#### § 111. Set-offs and counterclaims.

##### Annotation.

Effect of insolvency on right of surety or indorser to off-set obligation as against assignee of a debt due from him to principal.—46 L. R. A. (N. S.) 64, note.

Right of bank to set-off unmatured claim against deposit of debtor.—46 L. R. A. (N. S.) 1059, note.

Right to set-off insolvent's obligation upon a claim in the hands of his receiver, or assignee or trustee for creditors.—23 L. R. A. 313, note.

Effect of immaturity of claim at the time insolvency occurs upon the right of set-off.—17 L. R. A. 456, note.

#### § 112. Necessity of presentation of claims.

#### § 113. Time for presentation of claims.

(a) Creditors are allowed to come in and prove and take their share of any fund in court for distribution among creditors at any time before actual distribution has been made.—*Ohio Life Ins. & Trust Co. v. Winn*, 4 Md. Ch. 253.

#### § 114. Proof of claims.

##### Cross-References.

Power of attorney to make sworn statement of demand, see ante, § 46.

Competency of witness, see "Witnesses," § 53.

Proof of ownership by subrogation, see "Subrogation," § 41.

(a) A claim for money paid for taxes on the property of a corporation, not authenticated by vouchers or tax receipts, or even a copy of the assessor's statement, should be disallowed on a division of the company assets.—*Brydon v. Gemmell*, 73 Md. 530, 21 Atl. 712; *Davis v. Same*, Id.; *Gemmell v. Poe*, Id.; *North Branch Co. v. Gemmell*, Id. [Cited and annotated in 15 L. R. A. (N. S.) 729, on contingent attorney's fee in representative suit.]

#### § 115. Objections to claims and proceedings thereon.

(a) Where a decree for the sale of the property of an insolvent corporation for the benefit of its creditors was entered, and a day fixed for creditors to give in and file their claims, a creditor will be allowed to offer new proof of his claim in the interval between the final report of the auditor and its ratification, where his failure to produce such evidence before was that he supposed a proper amount of the trust fund would be retained to answer the result of an appeal which had been taken against his claim as proved, and which was still pending in the appellate court.—*White v. Okisko Co.*, 3 Md. Ch. 214.

#### § 116. Allowance or disallowance.

#### § 117. Priorities.

##### Cross-Reference.

Right to follow trust property on insolvency of trustee, see "Trusts," § 353.

##### Annotation.

Common-law priority of United States in payment from assets of debtor.—46 L. R. A. (N. S.) 260, note.

Priority of claim of United States.—29 L. R. A. 227; 1 L. R. A. (N. S.) 255, notes.

Priority of claim of state.—29 L. R. A. 243; 1 L. R. A. (N. S.) 255, notes.

#### § 118.—Rights of creditors in general.

(a) Creditors cannot claim superior equity over a mortgagee in the distribution of the assets of a corporation, when their claim arises from sales made to the corporation after the execution of the mortgage or its effects, of which they have actual and constructive knowledge.—*Swift v. Smith*, 65 Md. 428, 5 Atl. 534, 57 Am. Rep. 336.

(b) An existing creditor demanding specific security for his debt, and obtaining the promise of the debtor to comply, is to be considered in marshaling assets by a court

of equity as favorably as a creditor who at the moment of becoming a creditor obtains a pledge for a specific security.—*Alexander v. Ghiselin*, 5 Gill 138. [Cited and annotated in 30 L. R. A. 125, on injunction against execution sales or other proceedings under final process.]

#### § 119.—Statutory preferences.

(a) Wages earned within three months anterior to a “petition for insolvency” do not come within Code 1888, art. 47, § 15, giving preference to wages contracted not more than three months anterior to an “adjudication of insolvency.”—*Roberts v. Edie*, 85 Md. 181, 36 Atl. 820. (See Code 1911, art. 47, § 15.)

#### § 120.—Partnership and individual creditors.

#### § 121. Mode of distribution.

(a) An agreement entered into between the mortgagee of a debtor and others, unsecured creditors of the debtor and sureties for him, by which provision was made for the application of certain assets of the debtor to the payment of his debts, controls the whole matter, fixes the rule of distribution, and makes the law for the case.—*Hall v. Farmers Nat. Bank*, 53 Md. 120.

(b) It is proper for a trustee in insolvency to pay a judgment against the estate, where such judgment has been allowed in the audit, and no exception had been taken to it by the creditors or the parties interested.—*Walsh v. Boyle*, 30 Md. 262. [Cited and annotated in 49 L. R. A. 193, 222, on first and last days in computing time.]

#### § 122. Proceedings for distribution in general.

(a) An insolvent's trustee has no right to apply to a court of equity to distribute the funds in his hands. If he does, and the usual notice is given to creditors to exhibit their claims, a person who has a claim may exhibit it, and, if it be rejected, he may appeal from the order, and have the same reversed, on the ground that the court of equity had no jurisdiction.—*Pierson v. Trail*, 1 Md. 142.

#### §§ 123-126. (See Analysis.)

#### (G) ACCOUNTING AND DISCHARGE OF ASSIGNEE OR TRUSTEE.

##### Cross-Reference.

Reference of account, see “Reference,” § 8.

#### §§ 127-129. (See Analysis.)

#### § 130. (Omitted from the classification used herein.)

#### § 131. Compensation.

(a) Where the original trustee is removed and a new trustee appointed, the latter will not be entitled to commission on sums paid over to him by the original trustee.—*Gordon v. Matthews*, 30 Md. 235.

(b) Where a trustee in insolvency, after making a sale of an insolvent's property, fails to collect the purchase money, and himself becomes insolvent and is removed, commission will not be allowed him on the sale.—*Gordon v. Matthews*, 30 Md. 235.

#### § 132. Form and requisites of account.

(a) It is no objection to an auditor's account of the proceeds of a sale of a debtor's property that payments made by the trustee are not credited to him, where it appears from the account that he paid the claims and holds receipts for the amounts paid.—*Gordon v. Matthews*, 30 Md. 235.

#### §§ 133-135. (See Analysis.)

#### § 136. Liabilities of defaulting assignee or trustee and of sureties.

##### Cross-Reference.

Requisites and validity of bond, see ante, § 48.

(a) Under act 1854, c. 193, § 12, providing that “the court shall have the same power and control over the trustees under this act which courts of equity have over trustees appointed by a decree to sell property,” the trustee of an insolvent cannot be sued on his bond by a creditor whose claim has not been adjudicated and ordered to be paid.—*State v. Mayugh*, 13 Md. 371. (See Code, art. 47, § 13.)

(b) While proceedings in insolvency are pending before the County Court for the purpose of ascertaining and adjusting the claims of different creditors to dividends from the insolvent's estate, one of those creditors, whose claim is there disputed by the others, cannot maintain an action on the trustee's bond for alleged misconduct, neglect, or fraud in the administration of the estate.—*State v. Williams*, 3 Md. 163.

(c) The proper and only tribunal to adjust the claims of creditors of an insolvent's estate, inter sese, is the County Court of the county where the insolvent petitions; and this court might have decided that the plaintiff was no creditor at all; and, until this fact be determined, he cannot sue upon the trustee's bond, as no one but a creditor can so sue.—*State v. Williams*, 3 Md. 163.

(d) Creditors injured by the misconduct of the permanent trustee of an insolvent have a remedy in the proper forum and proper form upon his bond for the discharge of his duty.—*Williams v. Williams*, 5 Gill 84.

#### IV. COMPOSITION, RESPITE, OR RAISING ASSIGNMENT.

##### Cross-References.

Fraud as ground for setting aside discharge, see post, § 153.

Composition agreements in general, see "Compositions with Creditors."

Mandamus to court to compel hearing on proportion for composition, see "Mandamus," § 3.

§§ 137-143. (See Analysis.)

#### V. RIGHTS, REMEDIES, AND DISCHARGE OF INSOLVENT.

##### Cross-Reference.

Liability of justice of the peace for official act in discharging insolvent, see "Justices of the Peace," § 25.

##### § 144. Status of insolvent in general.

(a) On proceedings in insolvency by the holder of a note, the title thereto passes to his trustee, and disables the insolvent from conveying an interest in the note after the date of his personal discharge, and before the maturity of the note, even to an indorsee without notice of the insolvency proceedings.—*Somerville v. Brown*, 5 Gill 399.

##### § 145. Actions by or against insolvent.

(a) Where a decree of sale is passed in a suit to enforce a vendor's lien before insolvency proceedings are begun by the vendee, a sale under the decree may be made after the insolvency proceedings are instituted.—*Hurt v. Stull*, 4 Md. Ch. 391.

(b) A suit does not abate by the discharge of the defendant in insolvency, but it becomes defective, and cannot proceed until the defect is removed.—*Hall v. McPherson*, 3 Bland 529.

(c) An action may be maintained in the name of an insolvent debtor, unless there is a trustee appointed who has accepted the trust, and to whom a deed has been executed.—*Kirwan v. Latour*, 1 H. & J. 289, 2 Am. Dec. 519.

##### § 146. Discharge from arrest or imprisonment.

##### Cross-References.

Concurrent and conflicting jurisdiction of state and federal courts, see "Courts," § 495.

Discharge from arrest on mesne process in civil actions, see "Arrest," § 52.

Discharge from imprisonment on execution, see "Execution," §§ 449, 450.

(a) Where a party was brought into court by attachment to enforce an order directing the payment of money, and he there produced a certificate of his personal discharge under the insolvent laws of the state, he was ordered to be discharged from custody.—*Andrews v. Scotton*, 2 Bland 629.

(b) A discharge under the insolvent laws will protect a debtor from a *capias ad satisfaciendum* on a judgment previously rendered against him on behalf of the state.—*State v. Walsh*, 2 G. & J. 406.

(c) A discharge of an insolvent, under act 1774, c. 28, will not release him from a debt contracted after the passage of the act, though both he and the creditor were citizens of the state at the date of the discharge.—*Gordon v. Tumer*, 5 H. & J. 369. (See Code, art. 47, §§ 1, et seq.)

(d) The debtor taken on a *ca. sa.* will be discharged on producing his release under an insolvent law of another state.—*McKim v. Marshall*, 1 H. & J. 101.

##### § 147. Exemptions.

##### § 148. Death of insolvent.

##### § 149. Right to discharge in general.

(a) Arrest for debt was not necessary, at the adoption of the Constitution of 1851, to entitle a person to be discharged, under the insolvent laws of the state, and those laws were not abrogated by Const. art. 3, § 44, providing that no person shall be imprisoned for debt.—*Trail v. Snouffer*, 6 Md. 308. (See Const. 1867, art. 3, § 38.) [Cited and annotated in 49 L. R. A. 160, 171, on effect of judgment against dead person; in 61 L. R. A. 354, on effect of death after judgment on remedy by execution.]

**§ 150. Grounds for refusal of discharge.**

(a) The failure of the debtor to file a proper schedule of property and list of debts will debar him from obtaining a release from his debts until he does comply with such requirements, and (being a resident of Baltimore city) his case should be remanded by the Court of Common Pleas to the commissioner, for the purpose of giving him an opportunity so to comply.—*Teackle v. Crosby*, 14 Md. 14.

**§ 151. Application for discharge and proceedings thereon.**

(a) Act 1831, c. 316, § 4, requires the commissioners in insolvency proceedings, notwithstanding their power to grant final discharges, to report and return to the court all their proceedings and the papers in the case, and contains a proviso that when they shall extend the time for final hearing, and shall have made their report and return, they may "grant a final discharge as aforesaid, or otherwise proceed to every effect as if such report and return had not been made." *Held*, that under such proviso the commissioners have still jurisdiction to extend the time for the final hearing after an unfavorable report.—*State v. Reaney*, 13 Md. 230. (See Code, art. 47, §§ 1, et seq.)

(b) A debtor applied to a justice of the Orphans' Court of Howard district for the benefit of the insolvent laws. He had resided in the district for 12 months immediately preceding his application, and prior to that time had resided in Baltimore. He presented with his petition a certificate from the clerk of Howard district that he had not within two years applied for the benefit of the insolvent laws, but filed no certificate from the clerk of Baltimore county. He received his personal discharge, but failing to give the required notice to his creditors, the district court, before whom the order required him to appear, extended the time of publication. *Held*, that under act 1836, c. 293, investing the courts with power in all cases to extend the time of publication of notice to creditors, and act 1844, c. 304, § 2, providing that all defects in proceedings now pending or hereafter instituted may be cured at any time before the final action of the county court, so as to enable the applicant to comply fully

with the several requirements of the insolvent act, the defects in the proceedings, if any, were wholly cured.—*Baylies v. Ellicott*, 9 Gill 452. (See Code, art. 47, §§ 1, et seq.)

(c) Before a final discharge can be obtained the trustee must certify to the court that he has received all the property contained in the schedule belonging to the insolvent.—*Kennedy v. Boggs*, 5 H. & J. 403.

**§ 152. Consent or opposition of creditors to discharge.**

(a) The fact that the petitioning creditors agree not to object to the discharge of their insolvent debtor, and a final adjudication is made upon that basis, does not bar any other creditor from objecting to such discharge, or affect the title of the trustee.—*Gottschalk v. Smith*, 74 Md. 560, 22 Atl. 401. [Cited and annotated in 26 L. R. A. 595, 597, on right to attach property in hands of assignee for creditors.]

**§ 153. Order or decree as to discharge.**

(a) The fact that one who has obtained his discharge in insolvency was not actually insolvent, and that a large surplus of his estate was returned to him by the trustee, will not impeach the discharge where there is no question of fraud, and will not renew a liability incurred previous to such discharge, and naturally released by it.—*State v. Culler*, 18 Md. 418. [Cited and annotated in 62 L. R. A. 449, on form of judgment on penal bonds.]

**§ 154. Revoking discharge.**

(a) Code 1888, art. 47, § 21, provides that any creditor may file allegations of fraud at any time within two years after the final discharge of an insolvent, and have issues made thereon and tried by a jury, and, if such issues be found against the insolvent his discharge shall be annulled. *Held*, that a creditor, with full knowledge of the fraud of an insolvent, and with opportunity to file objections, could not permit the insolvent to be discharged without objection, and then at any time within two years file a petition to annul the order of discharge.—*Goodwin v. Selby*, 77 Md. 444, 26 Atl. 872. (See Code 1911, art. 47, § 21.)

(b) A petition under Code 1888, art. 47, § 21, to annul an order discharging an insolvent, should allege specifically the fraudu-

lent acts of the insolvent relied upon, and the issues framed thereon should submit the finding of such fraudulent acts to the jury.—*Goodwin v. Selby*, 77 Md. 444, 26 Atl. 872. (See Code 1911, art. 47, § 21.)

(c) A creditor may appeal from the order of discharge for any defects or irregularities in the proceedings, but he cannot petition to vacate it on those grounds.—*Waters v. Momenthy*, 68 Md. 171, 11 Atl. 763.

(d) Where, under Code 1860, art. 48, § 19, a creditor of an insolvent files allegations of fraud within two years after the time of his final discharge, if the facts relied on tend to prove fraud, or that the insolvent did not comply with the requirements of the insolvent law, it was the duty of the court to have the issues framed confining the creditor to such facts as would sustain his allegations of fraud.—*Jaeger v. Requardt*, 25 Md. 231. (See Code 1911, art. 47, § 21.)

(e) After allegations of fraud have been filed against an insolvent, as provided by Code 1860, art. 48, § 19, the court should direct the framing of the issues, and determine whether the facts alleged, if proven, would be sufficient to convict the insolvent, and to rescind the release of the debtor.—*Jaeger v. Requardt*, 25 Md. 231. (See Code 1911, art. 47, § 21.)

(f) The jurisdiction of the court to dispose of a case in insolvency, under Code 1860, art. 48, § 19, providing for the filing of allegations of fraud at any time within two years after the time of the final discharge of an insolvent, attaches immediately on the filing of the allegations within the time prescribed.—*Jaeger v. Requardt*, 25 Md. 231. (See Code 1911, art. 47, § 21.)

(g) A petitioner in insolvency obtained his final discharge on the 1st of June, 1863. Allegations of fraud were filed by certain creditors on the 31st of May, 1865. Held, that the time of the filing of the allegations was within the two years prescribed by Code 1860, art. 48, § 19.—*Jaeger v. Requardt*, 25 Md. 231. (See Code 1911, art. 47, § 21.)

## § 155. Operation and effect of discharge.

### Cross-Reference.

Waiver of defense that discharge would impair obligation of contract, see "Constitutional Law," § 43.

## § 156.— In general.

(a) The fact that the defendant had been discharged under the insolvent law does not necessarily present a case of want of jurisdiction by the magistrate before whom a suit was brought to recover of the defendant a debt due before his application for the benefit of the insolvent law, so as to make an arrest on ca. sa. on a judgment rendered therein ground for an action of false imprisonment.—*Deal v. Harris*, 8 Md. 40, 63 Am. Dec. 686.

(b) A debtor, discharged under the insolvent laws of Maryland, cannot sue or be sued in respect to the property transferred under such law for the benefit of his creditors.—*Hall v. McPherson*, 3 Bland 529.

(c) After a discharge in insolvency is obtained, the objection that a prior petition by the same insolvent was pending at the time the present petition was filed is unavailing.—*Bowie v. Jones*, 1 Gill 208.

(d) Property acquired by an insolvent debtor, after he has been legally discharged, under act 1774, c. 28, otherwise than "by descent, gift, devise, bequest, or in a course of distribution," is not liable for debts contracted prior to his discharge; and, if it is liable, it cannot be affected by a fieri facias, without a scire facias having previously issued, if a year and a day has elapsed.—*Pollitt v. Parsons*, 2 H. & J. 61. (See Code, art. 47, §§ 1, et seq.)

## § 157.— Collateral attack.

(a) A judgment of the insolvent court cannot be disturbed when brought collaterally in question, provided there is no question of jurisdiction.—*State v. Culler*, 18 Md. 418. [Cited and annotated in 62 L. R. A. 449, on form of judgment on penal bonds.]

(b) Where a defendant pleads a discharge under the insolvent laws, the judgment of discharge cannot be questioned, if granted by a court of competent jurisdiction.—*Bowie v. Jones*, 1 Gill 208.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 158.— Debts and liabilities discharged.

(a) A discharge under the insolvent laws of one who is insured in a mutual insurance company releases him from all liability on his premium note.—*Reynolds v. Mutual Fire Ins. Co.*, 34 Md. 280, 6 Am. Rep. 337. [Cited and annotated in 15 L. R. A. (N. S.) 830, on effect of bankruptcy or insolvency proceedings, or assignment for creditors, on fire insurance.]

(b) A bond for the faithful performance of services executed before the obligor's application for the benefit of the insolvent laws is released by his discharge thereunder, though the breach of the bond occurred after the discharge.—*State v. Culler*, 18 Md. 418. [Cited and annotated, see supra, § 157.]

(c) Where the continuing partners of a firm contract to pay all the debts and acquit the retiring partner, who subsequently is obliged to pay debts which were not due and payable until after such contract, and also after the application of one of the partners for the benefit of the insolvency laws, such payments are recoverable in assumpsit against the insolvent partner even after a discharge in insolvency, they not having been provable against his estate.—*Berry v. McLean*, 11 Md. 92. [Cited and annotated in 9 L. R. A. (N. S.) 106, 113, 115, on assumption of debts on dissolution of partnership.]

(d) Defendant made his note, payable to plaintiff, who passed it away for value. Subsequently plaintiff was compelled to pay it. Held, that plaintiff might recover in an action for money paid to defendant's use, though after the note fell due, and before plaintiff paid it, defendant was discharged as an insolvent debtor, since the cause of action did not accrue till plaintiff paid the note, and hence was not discharged by the prior discharge in bankruptcy.—*Wharton v. Callan*, 2 Gill 173.

(e) A discharge under a state insolvent law is not a bar to a contract with a non-resident, made or to be performed out of the state.—*Frey v. Kirk*, 4 G. & J. 509, 23 Am. Dec. 581.

(f) A discharge, under the insolvent laws of Maryland, releases the debtor from a judgment previously rendered against him on behalf of the state.—*State v. Walsh*, 2 G. & J. 406.

### § 159.— Co-debtors, guarantors, and sureties.

(a) A husband's discharge in insolvency does not discharge the wife from her liability on their joint note.—*Allers v. Forbes*, 59 Md. 374, 43 Am. Rep. 557.

(b) Where a defendant made his note payable to plaintiff, who transferred it for value, and afterwards plaintiff paid it, he can maintain an action for money paid for the defendant, though after the note fell due, and before the plaintiff had paid, defendant was released under the insolvent laws.—*Wharton v. Callan*, 2 Gill 173.

### § 160.— Securities and liens.

#### Cross-Reference.

Dissolution of liens by adjudication, see ante, § 71.

### § 161.— Persons concluded in general.

### § 162.— Nonresidents.

(a) A discharge of a debtor under a state insolvent law does not extinguish a debt to a nonresident creditor, who did not participate in the insolvency proceedings.—*Potter v. Kerr*, 1 Md. Ch. 275; *Pinckney v. Lanahan*, 62 Md. 447; *Downes v. Fisher*, 77 Md. xvi, memorandum case, 27 Atl. 121, full report.

(b) Though a foreign creditor, with knowledge of the legal effect and operation of our insolvent system, lays his attachment in the hands of an insolvent's trustee, before such trustee actually receives the insolvent's property, it cannot be legitimately inferred from that knowledge, or from the acts done in pursuance of it, that he assented to or agreed to be bound by the laws themselves.—*Glenn v. Boston & S. Glass Co.*, 7 Md. 287.

(c) The discharge of a defendant under the insolvent laws does not impair the right of nonresident judgment creditors to obtain by attachment or execution on their judgments a preference over domestic creditors.—*Glenn v. Boston & S. Glass Co.*, 7 Md. 287.

(d) The fact that a foreign creditor brings suit in the courts of Maryland upon a contract made in that state does not subject the contract or a judgment obtained thereon to the operation of the insolvent laws of that state.—*Poe v. Duck*, 5 Md. 1.

(e) If a foreign creditor, either by himself or his attorney, voluntarily unites in the recommendation of a person as a trustee for the insolvent, it is such an acquiescence in the insolvent laws of a state as will place him on the same footing with the domestic creditors, and compel him to take the dividend of the assets as they do.—*Jones v. Horsey*, 4 Md. 306, 59 Am. Dec. 81.

(f) Voluntarily calling in aid the insolvent laws of the state by a foreign creditor to avoid a deed of trust, valid but for such laws, will have the effect to place such creditor upon the same level with domestic creditors.—*Jones v. Horsey*, 4 Md. 306, 59 Am. Dec. 81.

(g) Plaintiffs, citizens of the District of Columbia, sold goods in that district to defendant, a citizen of Maryland, for which the latter gave his note, executed in Maryland. A judgment was recovered on this note in Maryland, and on this judgment an attachment was issued before, and was levied on the assets of the defendant after his application for the benefit of the insolvent laws of Maryland. *Held*, that, the insolvent proceedings being inoperative as against the claim of the plaintiffs, it does not matter whether the attachment came into the sheriff's hands and was levied before or after the insolvent's petition, and being levied before the attachment of the other nonresident creditors, it is entitled to a priority over them, in reference to the same assets levied on by each.—*Owens v. Bowie*, 2 Md. 457.

(h) A discharge, under the insolvent laws of Maryland, cannot affect the right of foreign creditors to obtain against the insolvent in the Maryland courts an absolute and unqualified judgment, and to place their execution upon any property of the insolvent debtor to be found undistributed in the hands of the trustee.—*Potter v. Kerr*, 1 Md. Ch. 275.

(i) An action against husband and wife, founded on the note of the wife made by her while single in Louisiana, is not barred by her release before marriage, and after the maturity of the note, under the insolvent laws of Maryland.—*Nelson v. Bond*, 1 Gill 218. [Cited and annotated in 61 L. R. A. 749, on right to open default judgment to let in defense of limitations.]

### § 163.—Effect of foreign discharge.

### § 164. New promise to pay debt discharged.

#### Cross-Reference.

New promise by attorney of debtor, see "Attorney and Client," § 81.

#### Annotation.

New promise after discharge of debtor.—53 L. R. A. 363, note.

(a) An express promise by a debtor after his discharge under the insolvent laws to pay a prior debt waives the discharge.—*Knight v. House*, 29 Md. 194, 96 Am. Dec. 515.

(b) Where nothing more was proved than an intention and desire on the part of an insolvent to pay the plaintiff as soon as he was able, and requests made on several occasions to the witness by the insolvent to pay the plaintiff, the witness being then largely indebted to the insolvent, and the time when such indebtedness accrued was not shown, *held*, that, if it existed prior to the insolvent's application for the benefit of the insolvent laws, those requests were, legally, nothing more than an expression of willingness to pay, because the insolvent had no right to apply that debt to the satisfaction of one creditor in preference to another, or to make any application of it; that being the duty of his trustee.—*Baltimore & O. R. Co. v. Clark*, 19 Md. 509.

(c) *Held*, also, that if it accrued after the application for the benefit of the insolvent laws or discharge, the request to pay was not equivalent to an express, positive, unconditional promise to pay, but rather in the nature of an assignment of one debt to meet another, not stronger than the cases of part payment of principal or interest after the discharge, which are not sufficient to revive the debt.—*Baltimore & O. R. Co. v. Clark*, 19 Md. 509.

(d) A promise to pay, after bankruptcy, waives the discharge, and the prior debt is sufficient consideration for the new promise. But such promise, to charge the party, must be an express promise, and must be absolute and unconditional.—*Baltimore & O. R. Co. v. Clark*, 19 Md. 509.



(e) An express promise, established by implication or inference from circumstantial evidence, is an implied promise in effect. All the evils which would result from the one are attendant upon the other.—*Baltimore & O. R. Co. v. Clark*, 19 Md. 509.

#### § 165. Pleading discharge.

(a) Under act 1834, c. 293, there is no reason for taking out against an insolvent who, in a suit against himself, pleads his discharge, the qualified judgment which was previously wont to be sought. The plea is a bar to the action, and judgment should be for defendant. Under this act, proceedings for the property therein referred to should be against the trustee in insolvency, in whom it is vested by the act, and not against the insolvent.—*State v. Culler*, 18 Md. 418. (See Code, art. 47, §§ 1, et seq.) [Cited and annotated in 62 L. R. A. 449, on form of judgment on penal bonds.]

(b) In pleading an extension by the commissioners of the time for final hearing in an insolvency proceeding, it is sufficient to allege it and a subsequent discharge, and not necessary to allege the entries of continuances or notice.—*State v. Reaney*, 13 Md. 230.

(c) A court of equity will not interfere to restrain execution on a judgment at law on the ground that defendant had been discharged under the insolvent laws prior to its rendition, where defendant fails to plead his discharge in the action in which the judgment was obtained.—*Katz v. Moore*, 18 Md. 566. [Cited and annotated in 53 L. R. A. 362, on moral obligation as consideration.]

(d) Where, by the docket entries, it appeared before judgment confessed that the defendant's discharge had been suggested, it is no variance that a scire facias on the judgment had been issued without reference to such suggestion.—*Mackall v. Farmers Bank*, 12 G. & J. 176.

#### § 166. Evidence as to discharge or new promise.

(a) A defendant who pleads a discharge under the insolvent laws on an issue joined of nul tiel record replied by plaintiff in the action must produce before the court all the proceedings in the matter of his petition for

such relief, and show his conformity to the law, and the docket entries made by the clerks of the county courts in such cases are not equivalent to a record of the proceedings.—*Mackall v. Farmers Bank*, 12 G. & J. 176.

(b) Where a judgment is confessed and accepted subject to the defendant's discharge under the insolvent laws, it is not such an admission of his final discharge as to constitute sufficient evidence of the affirmative of an issue on the plea of nul tiel record of a discharge, joined in a scire facias to revive the judgment.—*Mackall v. Farmers Bank*, 12 G. & J. 176.

#### § 167. Reversion of property or surplus to debtor on termination of proceedings.

(a) The surplus remaining in the hands of a trustee appointed for a petitioner for the benefit of the insolvent laws, who was not in fact insolvent, after payment of debts, belongs to the insolvent by way of resulting trust.—*Weaver v. Leiman*, 52 Md. 708.

(b) Trustees under a deed, one of the trusts of which was, after satisfying the purposes of the deed, namely, the payment of the debts of the grantor, that the residue of the property should be held for the use of the grantor, were also appointed his trustees under the insolvent laws, and, acting in this double capacity, transferred certain stocks belonging to the grantor (the complainant) to the defendant. All his debts having been paid, and the trustees directed by the Court of Chancery to convey to him all the property they had not disposed of in performance of their duty as trustees in insolvency, it was held that the complainant was entitled to maintain a bill for the recovery of the stock from the defendant upon the ground that the transfer had been improperly obtained, and that the trustees were not necessary parties to the suit.—*Williams v. Savage Mfg. Co.*, 1 Md. Ch. 306.

### VI. APPEAL AND REVISION OF PROCEEDINGS.

#### Cross-Reference.

In actions by or against assignee or trustee, see ante, § 102.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### §§ 168-171. Superintendence and revision.

(a) The several acts of Assembly erecting the system which exists in Baltimore in relation to insolvent debtors have, in the first instance, invested the commissioners with sole and exclusive jurisdiction upon the subject of appointing a permanent trustee. Over the exercise of that power the Court of Chancery can exercise no control to supervise or reverse their appointment for any pretended error of judgment.—*Glenn v. Fowler*, 8 G. & J. 340. (See Code, art. 47, §§ 1, et seq.)

### § 172. Appeal.

### § 173.—Appellate jurisdiction.

### § 174.—Decisions reviewable.

#### Cross-Reference.

Under statutes authorizing appeals from decisions affecting substantial rights, see "Appeal and Error," § 91.

(a) An order directing a trustee for the benefit of creditors to pay out of the funds in his hands a certain amount to a creditor is appealable.—*Smith v. Penn-American Plate Glass Co.*, 111 Md. 696, 77 Atl. 264.

(b) No appeal lies from a judgment overruling a demurrer to a petition in insolvency, which adjudicates simply the sufficiency of the petition and affidavit, as this is not a final judgment, and decides no question under the insolvent laws, within the meaning of Code 1888, art. 47, § 31, on insolvents, which provides that "any person interested may appeal from the decision of the court on any question under this article."—*Tawes v. Tyler*, 71 Md. 506, 18 Atl. 887. (See Code 1911, art. 47, § 31.)

(c) An appeal will not lie from an order of the County Court, made in proceedings under the act for the relief of insolvent debtors, refusing to associate another trustee with the permanent trustee of the insolvent, and ordering a sale made by such trustee to be ratified and confirmed; but the remedy of creditors, in cases of misconduct of the trustee, is by suit upon his bond.—*Williams v. Williams*, 5 Gill 88.

(d) The trustee of an insolvent debtor cannot appeal from an order of the County Court before which the application of the

insolvent is pending, directing him to sell the right and title of the insolvent to certain stock mentioned in his schedule of effects.—*Williams v. Williams*, 5 Gill 88.

(e) An appeal will not lie from the refusal of the County Court, upon the motion of an insolvent debtor, to grant a rule on the trustee of such insolvent, who had given the usual bond requiring him to show cause why his appointment should not be revoked.—*Chase v. Glenn*, 1 H. & G. 160.

### § 175.—Right of review.

(a) The right of appeal from decisions in insolvency is granted only to persons aggrieved by the action of the court below.—*Salmon v. Pierson*, 8 Md. 297.

### § 176.—Presentation and reservation in lower court of grounds of review.

### § 177.—Certification of questions to appellate court.

(a) On appeal in insolvency proceedings, where the questions raised and decided in the court below have not been certified by such court as provided by Rev. Code 1878, art. 71, § 6 (Code 1860, art. 5, § 13), the appeal will be dismissed.—*Waters v. Momeny*, 68 Md. 171, 11 Atl. 763. (See Code 1911, art. 5, § 8.)

(b) Where a person, claiming title to negroes in the hands of a trustee in insolvency, waives his rights at law, and voluntarily comes into a court of insolvency, and submits his rights to it, he becomes subject to the provisions of the insolvent laws, including Code 1860, art. 5, § 13, which requires the certificate of the judge as to the points decided; and, where this provision is not complied with, the appeal will be dismissed.—*Wright v. Kuhn*, 20 Md. 421. (See Code 1911, art. 5, § 8.)

### § 178.—Taking and perfecting appeal, and effect.

(a) The provisions of Code 1860, art. 5, § 6, and art. 48, § 20, for appeals in causes in insolvency, require such an appeal to be entered or taken within 30 days. Held, that such limitation did not apply to the appeal bond required in such cases.—*Willis v. Bryant*, 22 Md. 373. (See Code 1911, art. 5, § 6; art. 47, § 31.)

(b) In matters of insolvency, act 1854, c. 193, § 20, is imperative in allowing only 30 days for the taking of appeal against a judgment or decision, and an appeal not taken in 30 days cannot be heard.—*Appeal of Sparks*, 18 Md. 417. (See Code, art. 47, § 31.)

(c) When an appeal from an order in an insolvency case, made on November 4th, is not entered until the following January 5th, it is too late to be considered, under act 1849, c. 88, allowing 30 days to enter such appeals.—*Glenn v. Chesapeake Bank*, 3 Md. 475. (See Code, art. 47, § 31.)

§§ 179-184. (See Analysis.)

### VII. COSTS AND FEES.

#### *Cross-References.*

Costs as provable claims against estate, see ante, § 110.

Ownership of judgment for costs in favor of assignee, see ante, § 129.

Priorities of costs and expenses in distribution of estate, see ante, § 119.

§§ 185-188. (See Analysis.)

### VIII. OFFENSES AGAINST INSOLVENCY LAWS.

§ 189. Offenses and punishment.

#### INSOLVENCY COURTS.

##### *Cross-Reference.*

See "Courts," §§ 48, 175.

#### INSOLVENT TRADERS' ACT.

##### *Cross-Reference.*

See "Insolvency."

## INSPECTION.\*

### *Scope-Note.*

[INCLUDES examination and certification of quality, etc., of articles of merchandise by public authority, to determine and assure their fitness for use, commerce, etc., in general, and more particularly for prevention of fraud; nature and scope of power to make such examination; constitutional and statutory provisions relating thereto; validity, construction, operation, and effect of inspection laws; and proceedings for their application and enforcement.

[EXCLUDES powers of municipalities in respect of such inspection (see "*Municipal Corporations*"); regulations for protection of public health in general (see "*Health*"); or for securing wholesomeness and purity of articles of food, etc. (see "*Food*"; "*Adulteration*"); discovery and inspection of writings relating to a cause of action or a defense, or evidence thereof (see "*Discovery*"); physical examination of injured person in assessing damages for the injury (see "*Damages*"); and inspection or view by the jury (see "*Trial*").

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Power to make regulations.
- § 2. Constitutional and statutory provisions.
- § 3. Subjects of inspection in general.
- § 4. Inspection officers.
- § 5. Mode of inspection in general.
- § 6. Fees.
- § 7. Violations of inspection laws.

### *Cross-References.*

Acts requiring inspection of beer and malt liquors manufactured or sold in state and exacting inspection fee as tax on privilege of carrying on business, see "Licenses," § 1.

Affecting liability for injuries from live electric wires, see "Electricity," § 16.  
Board of prison inspectors, see "Prisons," § 4.

\*Annotation: Words and Phrases, same title.

By adverse party of writing used to refresh memory of witness, see "Witnesses," § 256.

By employer of work of independent contractor, see "Master and Servant," § 318.

By judge, see "Trial," § 875.

By jury, see "Criminal Law," § 651; "Trial," § 28.

By jury, consideration in arriving at verdict, see "Criminal Law," § 860; "Trial," § 309.

By referee, see "Reference," § 61.

Certificate as evidence, see "Evidence," § 334.

Charges for inspection by health officers, see "Health," § 36.

Conflicting regulations by state and city, see "Municipal Corporations," § 592.

Constitutionality of inspection laws, deprivation of property without due process of law, see "Constitutional Law," § 295.

Constitutionality of regulations as to inspection, interference with interstate commerce, see "Commerce," §§ 50, 51.

Constitutionality of statutes, delegation of judicial powers, see "Constitutional Law," § 80.

Constitutionality of statutes, delegation of legislative power to inspectors, see "Constitutional Law," § 62.

Constitutionality of statutes, destruction of inferior goods as deprivation of property without due process of law, see "Constitutional Law," § 320.

Constitutionality of statutes, discrimination as to localities, see "Constitutional Law," § 225.

Constitutionality of statutes, subjects and titles of acts, see "Statutes," § 119.

Failure to inspect building as affecting liability for injuries to licensee, see "Negligence," § 50.

Liability of railroad company to licensees for failure to inspect cars, see "Railroads," § 275.

Of animals intended for slaughter, see "Animals," § 15.

Of assessment roll or books by taxpayers, see "Taxation," § 444.

Of ballots cast at election, see "Elections," § 255.

Of bankrupt's accounts in hands of trustee, see "Bankruptcy," § 274.

Of books and records of corporation by public, see "Corporations," § 395.

Of books and records of corporation by stockholders, see "Corporations," § 181.

Of books and records of foreign corporation, see "Corporations," § 650.

Of books of assignor for benefit of creditors, see "Assignments for Benefit of Creditors," § 287.

Of books of taxpayer, see "Taxation," § 336.

Of charitable institutions, see "Charities," § 44.

Of election ballots, see "Elections," § 299.

Of electric light or power plants, see "Electricity," § 10½.

Of fertilizers, see "Agriculture," § 7.

Of food, see "Food," § 3.

Of gas, gasworks, and appliances, see "Gas," § 11.

Of goods delivered, see "Sales," § 168.

Of goods delivered as affecting implied warranty, see "Sales," § 270.

Of instrumentalities for production and use of steam, see "Steam," § 6.

Of justice's records, see "Justices of the Peace," § 138.

Of logs, see "Logs and Logging," § 10.

Of mine as incident to determination of adverse claim, see "Mines and Minerals," § 38.

Of mines for protection of employees, see "Master and Servant," § 12.

Of minutes of grand jury, see "Grand Jury," § 40.

Of papers in hands of executor, see "Executors and Administrators," § 154.

Of person insured after injury or death under accident insurance policy, see "Insurance," § 549.

Of railroad cars delivered to connecting company, see "Railroads," § 262.

Of records of grand jury, see "Criminal Law," § 627½; "Grand Jury," § 41.

Of registration lists, see "Elections," § 111.

Of statement of earnings of mortgagor railroad company, see "Railroads," § 169.

Of steam boilers, engines and machinery, see "Steam," § 4.

Of streets, as precaution against injury from defects or obstructions, see "Municipal Corporations," § 795.

Of tools, machinery, appliances and places for work for protection of servant, see "Master and Servant," § 124.

Of trains by carrier of passengers, see "Carriers," § 290.

Of vessels, see "Shipping," §§ 9, 10.

Of weights and measures, see "Weights and Measures," § 7.

Of work done under contract for public improvement, see "Municipal Corporations," § 357.

Of writings and other matters, before trial, see "Discovery," §§ 80-108.

Physical examination of injured person, see "Damages," § 206.

Physical examination of party before trial, see "Discovery," § 78.

Power of city to require, see "Municipal Corporations," § 615.

Power of city to require inspection to secure public safety or health, see "Municipal Corporations," §§ 595, 597.

Restraining enforcement of inspection laws, see "Injunction," § 85.

Suit to restrain inspector as suit against state, see "States," § 191.

Wrongful inspection by jury ground for new trial, see "Criminal Law," § 925½.

### § 1. Power to make regulations.

#### Annotation.

Delegation by Legislature to railroad commission of power as to inspection of grain.—32 L. R. A. (N. S.) 652, note.

Validity of state statute regulating inspection of meat which is subject of interstate commerce.—27 L. R. A. (N. S.) 677, note.

### § 2. Constitutional and statutory provisions.

#### Cross-References.

See post, §§ 4, 5.

Delegation of power, see "Constitutional Law," § 62.

Discrimination as to localities, see "Constitutional Law," § 225.

Due process of law, see "Constitutional Law," §§ 295, 320.

Interstate commerce, see "Constitutional Law," §§ 50, 51.

Subject and title of act relating to state inspectors, see "Statutes," § 119.

#### Annotation.

See Code, art. 48, §§ 1, et seq.; Id. [vol. 3], art. 48; act 1916, c. 186, p. 341; c. 285, p. 566; c. 309, p. 614; c. 381, p. 779.

### § 3. Subjects of inspection in general.

### § 4. Inspection officers.

#### Cross-Reference.

Delegation of judicial duties to factory inspectors, see "Constitutional Law," § 80.

(a) By act 1854, c. 200, every inspector of bark, whether appointed by the governor under act 1821, c. 77, or not, is bound to take out a license.—*Davis v. State*, 7 Md. 151, 61 Am. Dec. 331. (See Code, art. 48, §§ 50, et seq.; act 1916, c. 186, p. 341; c. 285, p. 566.)

### § 5. Mode of inspection in general.

(a) Act 1864, c. 346, § 41, as modified by act 1870, c. 291, which constituted a part of the public local law, was not modified or repealed by act 1872, c. 36, entitled "An act to add a new article to the Code [1860], Public General Laws regulating the inspection of tobacco," which repealed all acts or parts of acts inconsistent with its provisions. Under such section it is the duty of a tobacco grower to deliver tobacco packed by him to one of the state tobacco warehouses, in order that the inspectors may determine whether it is packed in hogsheads of the proper dimensions, and whether it was packed in the county or neighborhood where it was grown,

and marked as the statute directs.—*Turner v. State*, 55 Md. 240. (See Code 1911, art. 48, §§ 9-49; Id. [vol. 3], art. 48, §§ 32, 32A, 40, 41; act 1916, c. 309, p. 614, amending and reenacting, art. 48, §§ 9-49; Id. c. 381, p. 779, amending art. 48, § 11.)

(b) Act 1858, c. 256, providing for the inspection of wheat in Baltimore city, and that the public inspector shall weigh "all wheat," is satisfied if 1 bushel in 60 is weighed; that being the long established and reasonable custom.—*Frazier v. Warfield*, 13 Md. 279.

### § 6. Fees.

### § 7. Violations of inspection laws.

## INSPECTORS.\*

#### Cross-References.

In general, see "Inspection," § 4.

Of customs, see "Customs Duties," § 60.

To investigate refusal or neglect of school directors to provide buildings, see "Schools and School Districts," § 67.

## INSTALLMENTS.

#### Cross-References.

Abatement of action by pendency of action on prior installment, see "Abatement and Revival," § 8.

Accrual of installments after commencement of action, see "Action," § 65.

Actions for separate installments of same claim, see "Abatement and Revival," § 8.

Calculation of amount of principal and interest due on a contract for payments on installments as constituting account stated, see "Account Stated," § 1.

Conclusiveness in action for installment of matters decided in action for prior installment, see "Judgment," § 714.

Concurrent actions for installments of rent, see "Abatement and Revival," § 8.

Delivery of installments of goods sold, see "Sales," § 163.

Effect of payment of installments due pending foreclosure, see "Action," § 65.

Interest on installments of interest, see "Interest," § 17.

Interest on installments of principal, see "Interest," § 16.

Judgment on installment of debt as bar to another action, see "Judgment," §§ 596, 603.

Limitation of actions on installments of debt, see "Limitation of Actions," § 51.

Maturity of note on nonpayment of installments, see "Bills and Notes," § 129.

Negotiability of bonds as affected by provision for installments, see "Bonds," § 78.

Negotiability of note as affected by nonpayment of installments, see "Bills and Notes," § 173.

\*Annotation: Words and Phrases, same title.

Negotiability of note providing that non-payment of installments shall mature note, see "Bills and Notes," § 155.  
 Of assessment for public improvements, see "Municipal Corporations," § 522.  
 Of mortgage debt, default in payment as affecting right to foreclose, see "Mortgages," § 397.  
 Of price of goods sold, see "Sales," § 192.  
 Of price of land sold, see "Vendor and Purchaser," § 182.  
 Of rent, see "Landlord and Tenant," § 200.  
 Penalty on bond payable in installments, see "Bonds," § 110.  
 Pendency of separate actions for different installments of rent, see "Abatement and Revival," § 8.  
 Sales on installment payments, see "Sales," §§ 450-483.  
 Splitting cause of action for installments, see "Action," § 53; "Judgment," §§ 596, 603.  
 Time for payments of bonds, see "Bonds," § 65.  
 Unpaid installments of interest as evidence of bad faith of purchaser, see "Bills and Notes," § 509.  
 Unpaid installments on bonds as constructive notice to purchaser, see "Bonds," § 85.  
 Unpaid installments on notes as affecting rights of purchasers, see "Bills and Notes," § 344.

### INSTIGATION.\*

#### *Cross-Reference.*

Of crime, see "Criminal Law," §§ 37, 45, 59-82.

### INSTITUTES.\*

#### *Cross-Reference.*

Teachers' institutes, see "Schools and School Districts," § 130.

### INSTITUTION.\*

#### *Cross-Reference.*

Of action in general, see "Action," § 64.

### INSTITUTIONS.\*

#### *Cross-References.*

See "Asylums"; "Cemeteries"; "Charities"; "Colleges and Universities"; "Hospitals"; "Schools and School Districts."  
 As including private banks, see "Banks and Banking," § 4.  
 Exemption from taxation, see "Taxation," §§ 241-245.

### INSTRUCTIONS.\*

#### *Cross-References.*

By attorney to client, see "Attorney and Client," § 108.  
 By client to attorney, see "Attorney and Client," § 108.  
 By court or referee to trustee in bankruptcy, see "Bankruptcy," § 247.

By court to executor or administrator, see "Executors and Administrators," § 82.  
 By court to grand jury, see "Grand Jury," § 23.  
 By court to jury, see "Criminal Law," §§ 755-836, 838-847; "Justices of the Peace," § 112; "Trial," §§ 182-296.  
 By court to receiver, see "Receivers," §§ 110-116.  
 By court to trustees, see "Trusts," §§ 178, 271½.  
 By master to servant, see "Master and Servant," §§ 150-158.  
 Incorporating in bill of exceptions, see "Criminal Law," § 1091; "Exceptions, Bill of," §§ 18, 19.  
 To agent of insurer, see "Insurance," § 91.

### INSTRUMENTS.\*

#### *Cross-References.*

See "Alteration of Instruments"; "Cancellation of Instruments"; "Forgery"; "Frauds, Statute of"; "Lost Instruments"; "Reformation of Instruments"; "Seals"; "Signatures."  
 Appealability of orders directing production of books and papers, see "Appeal and Error," § 104.  
 As evidence, see "Criminal Law," §§ 398-404, 429-447; "Evidence," §§ 157-187, 325-469.  
 Exemption of tools or instruments of farmers or mechanics, see "Bankruptcy," § 396.  
 Failure to prove execution or delivery, objection first made on appeal, see "Appeal and Error," § 209.  
 Incorporating instruments in record on appeal, see "Appeal and Error," §§ 510, 515, 524.  
 Incorporation in bill of exceptions, see "Criminal Law," § 1091; "Exceptions, Bill of," §§ 21-23.  
 Incorporation in case or statement, see "Appeal and Error," §§ 561, 562.  
 Incorporation in transcript, see "Appeal and Error," §§ 597-601; "Criminal Law," § 1104.  
 Making on Sunday, see "Sunday," §§ 10-17.  
 Objection first made on appeal to documentary evidence, see "Appeal and Error," § 204.  
 Objection first made on appeal to validity, see "Appeal and Error," § 178.  
 Objection first made on appeal to want of proof of execution, see "Appeal and Error," § 209.  
 Production before trial, see "Discovery," §§ 23, 80-108.  
 Production by party at trial, see "Evidence," § 368.  
 Production by witness at trial, see "Witnesses," §§ 16, 298.  
 Recording, see "Chattel Mortgages," §§ 82-99; "Contracts," § 44; "Deeds," §§ 79-88; "Mortgages," §§ 89-96; "Records"; "Sales," §§ 148, 465; "Vendor and Purchaser," §§ 26, 231.  
 Use by witness to explain testimony, see "Witnesses," §§ 252-259.

\*Annotation: Words and Phrases, same title.

*Particular classes of instruments.*

See "Abstracts of Title"; "Assignments"; "Assignments for Benefit of Creditors"; "Bills and Notes"; "Bonds"; "Chattel Mortgages"; "Contracts"; "Covenants"; "Deeds"; "Mortgages"; "Subscriptions"; "Wills."  
 Bills of lading, see "Carriers," §§ 46-69;  
 "Shipping," §§ 104-109.  
 Bills of sale, see "Sales," §§ 140-149.  
 Bottomry and respondentia bonds, see "Shipping," §§ 88-100.  
 Charter parties, see "Shipping," §§ 34-58.  
 Contracts of sale of land, see "Vendor and Purchaser."  
 Deed or declaration of adoption, see "Adoption," § 8.  
 Indentures of apprenticeship, see "Apprentices," § 8.  
 Letters of credit, see "Banks and Banking," § 191.  
 Marriage settlements, see "Husband and Wife," §§ 26-35.  
 Patents for inventions, see "Patents," §§ 115-180.  
 Patents for public lands, see "Public Lands," §§ 110-117.  
 Policies of insurance, see "Insurance," §§ 124-179.

**INSUBORDINATION.**

*Cross-Reference.*

Ground for discharge of servant, see "Master and Servant," § 80.

**INSUFFICIENCY.\***

*Cross-References.*

In pleading, see "Pleading."  
 Of evidence, see "Evidence," §§ 584-601;  
 "Criminal Law," §§ 549-572.  
 Of streets and highways, see "Highways," §§ 187-216; "Municipal Corporations," §§ 755-826.

**INSULATION.**

*Cross-References.*

Injuries from defective insulation of electrified wires, see "Electricity," §§ 12-19.

Master's duty to insulate electric wires for protection of servant, see "Master and Servant," § 119.

**INSULTING GESTURES.\***

*Cross-Reference.*

As provocation for assault, see "Assault and Battery," § 66.

**INSULTING LANGUAGE.**

*Cross-References.*

See "Disorderly Conduct"; "Obscenity."  
 Actionable words, see "Libel and Slander," §§ 1-51.

As constituting assault, see "Assault and Battery," § 51.

Damages for libel or slander, see "Libel and Slander," §§ 113-121.

Element of damages for ejection of passenger, see "Carriers," § 382.

Element of damages in general, see "Damages," § 54.

Evidence in mitigation of damages, see "Assault and Battery," § 34.

Excuse or justification for assault, see "Assault and Battery," §§ 12, 14, 66.

Excuse or justification for homicide, see "Homicide," §§ 45, 49, 95.

Provoking breach of the peace, see "Breach of the Peace," § 2.

To female, as tort, see "Torts," § 8.

**INSURABLE INTEREST.**

*Cross-Reference.*

See "Insurance," §§ 114-123, 767.

**INSURANCE.\***

*Scope-Note.*

[INCLUDES the regulation and conduct of the business of insurance, in every form, by individual underwriters or corporations, mutual or co-operative associations, and insurance agents or brokers; organization, powers, and liabilities of insurance companies and associations, and rights and liabilities of their members, officers, and agents; and contracts of insurance, and rights, liabilities, and remedies incident thereto.

[EXCLUDES associations for mutual benefit otherwise than by insurance (see "Beneficial Associations"); burning property to defraud insurers (see "Arson"; "Fires"); and taxation of capital, stock, or property of insurance companies (see "Taxation").

[For complete list of matters excluded, see cross-references, post.]

*Analysis.*

*Index to Main Divisions in Analysis, as set forth in the following columns:*

	Column.
I. Control and Regulation in General.....	7635
II. Insurance Companies.....	7636
III. Insurance Agents and Brokers.....	7636
IV. Insurable Interest.....	7637

\*Annotation: Words and Phrases, same title.

V.	The Contract in General.....	7638
VI.	Premiums, Dues, and Assessments.....	7639
VII.	Assignment or Other Transfer of Policy.....	7639
VIII.	Cancellation, Surrender, Abandonment, or Rescission of Policy.....	7640
IX.	Avoidance of Policy for Misrepresentation, Fraud, or Breach of Warranty or Condition.....	7640
X.	Forfeiture of Policy for Breach of Promissory Warranty, Covenant, or Condition Subsequent.....	7642
XI.	Estoppel, Waiver, or Agreements Affecting Right to Avoid or Forfeit Policy.....	7643
XII.	Risks and Causes of Loss.....	7644
XIII.	Extent of Loss and Liability of Insurer.....	7646
XIV.	Notice and Proof of Loss.....	7647
XV.	Adjustment of Loss.....	7648
XVI.	Right to Proceeds.....	7648
XVII.	Payment or Discharge, Contribution, and Subrogation.....	7649
XVIII.	Actions on Policies.....	7649
XIX.	Reinsurance.....	7650
XX.	Mutual Benefit Insurance.....	7651

### **I. Control and Regulation in General.**

- § 1. Right to insure in general.
- § 2. What constitutes insurance.
- § 3. Power to control and regulate.
- § 4. Constitutional and statutory provisions.
- § 5. Authority or license to do business.
- § 6. Unauthorized insurance.
- § 7. License fees and taxes.
- § 8. Resources and securities.
- § 9. Reports and statements.
- § 10. Supervision by public officers or courts.
- § 11. Conduct of business.
- § 12. Regulation of agents and brokers.
- § 13. Lloyds associations.
- § 14. Boards of underwriters.
- § 15. Foreign underwriters or companies and their agents.
- § 16. — What constitutes "doing business."
- § 17. — Application of local laws.
- § 18. — Subjection to special requirements.
- § 19. — Retaliatory legislation.
- § 20. — Local authority or license and license fees or taxes.
- § 21. — Local funds and securities.
- § 22. — Appointment and regulation of local agents.
- § 23. — Reports and supervision and conduct of business.
- § 24. — Effect of noncompliance with law.
- § 25. — Civil liability of agents.
- § 26. — Actions.
- § 27. Penalties for violations of regulation.
- § 28. — Discrimination in rates.
- § 29. Offenses by insurers.
- § 30. Offenses by agents or brokers.
- § 31. Offenses by persons dealing with insurers.



**II. Insurance Companies.****(A) STOCK COMPANIES.**

- § 32. Incorporation, organization, and existence.
- § 33. Capital and stock.
- § 34. Stockholders.
- § 35. Officers.
- § 36. Franchises and powers.
- § 37. Special funds.
- § 38. Profits, dividends, and surplus.
- § 39. Losses and assessments.
- § 40. Guaranty obligations.
- § 41. Insolvency and dissolution.
- § 42. — Insolvency and its effect in general.
- § 43. — Rights of policy holders on insolvency.
- § 44. — Remedies and proceedings on insolvency.
- § 45. — Voluntary liquidation.
- § 46. — Reorganization.
- § 47. — Consolidation.
- § 48. — Grounds for forfeiture of franchise or dissolution.
- § 49. — Proceedings to enforce dissolution.
- § 50. — Assets and receivers.
- § 51. — Presentation and payment of claims.

**(B) MUTUAL COMPANIES.**

- § 52. Incorporations, organization, and existence.
- § 53. — Changing to joint-stock company.
- § 54. Constitutions and by-laws.
- § 55. Members.
- § 56. Officers.
- § 57. Franchises and powers.
- § 58. Special funds.
- § 59. Profits, dividends, and surplus.
- § 60. Guaranty obligations.
- § 61. Insolvency and dissolution.
- § 62. — Insolvency and its effect in general.
- § 63. — Rights and liabilities of members on insolvency.
- § 64. — Remedies and proceedings on insolvency.
- § 65. — Voluntary liquidation.
- § 66. — Reorganization.
- § 67. — Consolidation.
- § 68. — Grounds for forfeiture of franchise or dissolution.
- § 69. — Proceedings to enforce dissolution.
- § 70. — Assets and receivers.
- § 71. — Assessments by receivers.
- § 72. — Distribution of assets and funds.

**III. Insurance Agents and Brokers.****(A) AGENCY FOR INSURER.**

- § 73. The relation in general.
- § 74. Appointment or employment of agent.

**III. Insurance Agents and Brokers—Continued.****(A) AGENCY FOR INSURER—Continued.**

- § 75. Implied agency.
- § 76. Evidence as to agency.
- § 77. Estoppel to deny agency.
- § 78. Scope and extent of agency.
- § 79. Duration and termination of agency.
- § 80. Authority and duties of agent as to insurer.
- § 81. Individual interest of officer or agent.
- § 82. Accounting by agent.
- § 83. Liabilities of agents and their sureties.
- § 84. Compensation of agent.
- § 85. Breach of contract by principal.
- § 86. Extent and exercise of powers of agents.
- § 87. — In general.
- § 88. — General or special agents.
- § 89. — Assistants and clerks of agents.
- § 90. — Effect of provisions of policy.
- § 91. — Effect of instructions to agent.
- § 92. — Evidence as to authority.
- § 93. Unauthorized and wrongful acts of agent.
- § 94. Ratification.
- § 95. Notice to agent.

**(B) AGENCY FOR APPLICANT OR INSURED.**

- § 96. Creation of agency to procure insurance in general.
- § 97. Creation of agency for both parties.
- § 98. — In general.
- § 99. — Effect of provisions of policy.
- § 100. Evidence as to agency.
- § 101. Scope and extent of agency.
- § 102. Duration and termination of agency.
- § 103. Authority and duties of agent as to principal.
- § 104. Agreements to procure insurance and liability thereunder.
- § 105. Compensation of agent.
- § 106. Breach of contract by principal.
- § 107. Extent and exercise of powers of agent.
- § 108. — In general.
- § 109. — Representation of both parties.
- § 110. — Evidence as to authority.
- § 111. Unauthorized and wrongful acts of agent.
- § 112. Ratification.
- § 113. Notice to agent.

**IV. Insurable Interest.**

- § 114. Necessity in general.
- § 115. What constitutes interest in property.
- § 116. What constitutes interest in human life or health.
- § 117. Estoppel to deny interest.
- § 118. Insurance without interest.
- § 119. — Wagering policies in general.

**IV. Insurable Interest—Continued.**

- § 120. — Effect of provisions of policy.
- § 121. Necessity of interest to sustain assignment.
- § 122. Assignment of policy to person without interest.
- § 123. Extinguishment of interest.

**V. The Contract in General.****(A) NATURE, REQUISITES, AND VALIDITY.**

- § 124. Nature of the contract.
- § 125. What law governs.
- § 126. Subjects of insurance.
- § 127. Existence and condition of subject-matter.
- § 128. Executory agreements to insure.
- § 129. Powers of agents in respect of contracts in general.
- § 130. Application or offer and acceptance.
- § 131. Validity of oral contracts.
- § 132. Binding slips or memoranda.
- § 133. Form and requisites of policy.
- § 134. Papers accompanying policy.
- § 135. Incorporation of constitution, by-laws, or rules of insurer.
- § 136. Delivery and acceptance of policy.
- § 137. Payment of premium or dues.
- § 138. Validity in general.
- § 139. Legality of object.
- § 140. Partial invalidity.
- § 141. Estoppel or waiver as to defects or objections.
- § 142. Ratification of defective or invalid contract.
- § 143. Reformation.
- § 144. Modification.
- § 145. Renewal.

**(B) CONSTRUCTION AND OPERATION.**

- § 146. Application of general rules of construction.
- § 147. What law governs.
- § 148. Executory agreements to insure.
- § 149. Printed and written portions of policy.
- § 150. Matter on margin of or slip attached to policy.
- § 151. Construing together policy and accompanying papers.
- § 152. Construing statutes and charter, by-laws, or rules of insurer as part of policy.
- § 153. Usages of business.
- § 154. Construction by parties.
- § 155. Evidence to aid construction.
- § 156. Parties to contract and relations between them.
- § 157. Subject-matter insured in general.
- § 158. Subjects of marine insurance.
- § 159. — In general.
- § 160. — Open or running policies.
- § 161. Property covered by insurance against fire or other cause of loss.
- § 162. — In general.
- § 163. — Description of property.

**V. The Contract in General—Continued.****(B) CONSTRUCTION AND OPERATION—Continued.**

- § 164. — Description of title or interest.
- § 165. — Description of location.
- § 166. — Shifting risk.
- § 167. Titles insured.
- § 168. Duties and obligations guaranteed.
- § 169. Persons covered by life or accident insurance.
- § 170. Amount of insurance.
- § 171. — Amount fixed by policy in general.
- § 172. — Valued policy.
- § 173. — Special provisions of policy.
- § 174. — Proceeds of assessments.
- § 175. Commencement of risk.
- § 176. Term and duration of risk.
- § 177. — Term fixed by policy in general.
- § 178. — Voyage or time policies of marine insurance.
- § 179. Entire or severable contract.
- § 179½. Loans on policies.

**VI. Premiums, Dues, and Assessments.**

- § 180. Nature and grounds of obligation.
- § 181. Right of insurer to premiums.
- § 182. Persons liable for premiums.
- § 183. Amount of premiums.
- § 184. Rebates from premiums.
- § 185. Reduction of premiums by profits or dividends.
- § 186. Payment of premiums.
- § 187. Notes for premiums.
- § 188. Actions for premiums.
- § 189. Premium or deposit notes.
- § 190. Grounds of assessment in general.
- § 191. Power and duty to make assessment.
- § 192. Liability to assessment.
- § 193. Amount of assessment.
- § 194. Reduction of assessment by profits or dividends.
- § 195. Levy and collection of assessment.
- § 196. Payment of assessment.
- § 197. Enforcement of assessment.
- § 198. Refunding or recovery of premiums or assessments paid.

**VII. Assignment or Other Transfer of Policy.**

- § 199. Assignability of policies.
- § 200. What law governs.
- § 201. Statutory restrictions on transfer.
- § 202. Right of insured to assign in general.
- § 203. Right of insured to assign life or accident policies.
- § 204. Right of beneficiary to assign life or accident policies.
- § 205. Consent of beneficiary to assignment by insured.
- § 206. Consent of insured to assignment by beneficiary.
- § 207. Consent of insurer.
- § 208. Validity of oral assignment.

**VII. Assignment or Other Transfer of Policy—Continued.**

- § 209. Form and requisites of assignment in writing.
- § 210. Consideration for assignment.
- § 211. Delivery and acceptance of assignment.
- § 212. Validity of assignment in general.
- § 213. Construction of assignment.
- § 214. Transfer without formal assignment.
- § 215. Transfer of subject of insurance without policy.
- § 216. Fraud in procuring transfer.
- § 217. Notice to insurer.
- § 218. Rights and liabilities of assignee.
- § 219. — In general.
- § 220. — Transfer to purchaser of insured property.
- § 221. — Transfer to mortgagee of insured property.
- § 222. — Transfer as collateral security.
- § 223. Priorities.
- § 224. Partial assignment.
- § 225. Reassignment.

**VIII. Cancellation, Surrender, Abandonment, or Rescission of Policy.**

- § 226. Revocability of contract in general.
- § 227. Statutory provisions.
- § 228. Right of insurer to cancel.
- § 229. Notice to cancel.
- § 230. Repayment of unearned premium on cancellation.
- § 231. Delivery of policy for cancellation.
- § 232. Acts constituting cancellation.
- § 233. Validity of cancellation.
- § 234. Ratification of invalid cancellation.
- § 235. Evidence of cancellation.
- § 236. Operation and effect of cancellation.
- § 237. Remedies for wrongful cancellation.
- § 238. Right of insured to surrender in general.
- § 239. Right to surrender life or accident policies.
- § 240. Acts constituting surrender and acceptance.
- § 241. Validity of surrender.
- § 242. Evidence of surrender.
- § 243. Operation and effect of surrender.
- § 244. Repayment and recovery of premiums or paid-up value on surrender.
- § 245. Abandonment by insured or beneficiary.
- § 246. Rescission by agreement of parties.
- § 247. Rescission by insurer.
- § 248. Rescission by insured or beneficiary.
- § 249. Actions for rescission.

**IX. Avoidance of Policy for Misrepresentation, Fraud, or Breach of Warranty or Condition.****(A) GROUNDS IN GENERAL.**

- § 250. Statutory provisions.
- § 251. What law governs.

**IX. Avoidance of Policy for Misrepresentation, Fraud, or Breach of Warranty or Condition—Continued.****(A) GROUNDS IN GENERAL—Continued.**

- § 252. Representations.
- § 253. — In general.
- § 254. — Falsity.
- § 255. — Materiality.
- § 256. — Effect of misrepresentation.
- § 257. Concealment.
- § 258. — In general.
- § 259. — Knowledge of facts by applicant or his agent.
- § 260. — Materiality.
- § 261. — Effect.
- § 262. Fraud or false swearing in obtaining insurance.
- § 263. Warranties.
- § 264. — In general.
- § 265. — Distinction between warranties and representations.
- § 266. — Warranties as part of contract.
- § 267. — Fulfillment or breach.
- § 268. — Effect of breach.
- § 269. Conditions precedent.
- § 270. — Effect of breach.
- § 271. Parties affected by avoidance of policy.

**(B) MATTERS RELATING TO PROPERTY OR INTEREST INSURED.**

- § 272. Subjects of marine insurance in general.
- § 273. Seaworthiness of vessel.
- § 274. Description of building in general.
- § 275. Situation of building.
- § 276. Vicinity of other buildings.
- § 277. Condition of building.
- § 278. Use of building.
- § 279. Occupation of building.
- § 280. Description and condition of goods.
- § 281. Amount or value.
- § 282. Title or interest of insured.
- § 283. Incumbrances.
- § 284. Solvency of debtors.
- § 285. Fidelity of employees and others.
- § 286. Special circumstances affecting risk.
- § 287. Precautions against loss.
- § 288. Other insurance.

**(C) MATTERS RELATING TO PERSON INSURED.**

- § 289. Description in general.
- § 290. Age.
- § 291. Health and physical condition.
- § 292. Medical attendance.
- § 293. Family history.
- § 294. Marriage.
- § 295. Residence.

**IX. Avoidance of Policy for Misrepresentation, Fraud, or Breach of Warranty or Condition—Continued.****(C) MATTERS RELATING TO PERSON INSURED—Continued.**

- § 296. Occupation.
- § 297. Habits.
- § 298. Interest of assured or beneficiary.
- § 299. Special circumstances affecting extent of risk.
- § 300. Previous application for insurance.
- § 301. Other existing insurance.

**X. Forfeiture of Policy for Breach of Promissory Warranty, Covenant, or Condition Subsequent.****(A) GROUNDS IN GENERAL.**

- § 302. Statutory provisions.
- § 303. Continuing or promissory representations.
- § 304. Continuing or promissory warranties.
- § 306. Conditions subsequent.
- § 307. — Conditions in general.
- § 308. — Fulfillment or breach.
- § 309. — Effect of breach.
- § 310. Notice and proceedings to give effect to forfeiture.
- § 311. Parties affected by forfeiture of policy.

**(B) MATTERS RELATING TO PROPERTY OR INTEREST INSURED.**

- § 311½. Statutory provisions.
- § 312. Subjects of marine insurance in general.
- § 313. Sailing, voyage, and navigation of vessel.
- § 314. Deviation or other change of voyage.
- § 315. Illegality of voyage.
- § 316. Buildings in general.
- § 317. Erection or occupation of neighboring buildings.
- § 318. Change in condition of building.
- § 319. Change in use of building.
- § 320. Illegal use of building.
- § 321. Suspension of business carried on in building.
- § 322. Change in occupancy of building.
- § 323. Building becoming vacant.
- § 324. Falling of building.
- § 325. Goods insured in general.
- § 326. Keeping or use of prohibited articles.
- § 327. Removal of goods.
- § 328. Change of title or interest.
- § 329. Change of possession.
- § 330. Incumbrances.
- § 331. Solvency of debtors.
- § 332. Fidelity of employees and others.
- § 333. Special causes increasing risk.
- § 334. Precautions against loss.
- § 335. Keeping books, papers, and safe.
- § 336. Additional insurance.

**X. Forfeiture of Policy for Breach of Promissory Warranty, Covenant, or Condition Subsequent—Continued.****(C) MATTERS RELATING TO PERSON INSURED.**

- § 337. Change of residence.
- § 338. Travel.
- § 339. Change of occupation.
- § 340. Military or naval service.
- § 341. Change in habits.
- § 342. Additional insurance.

**(D) ASSIGNMENT OF POLICY.**

- § 343. Restrictions on assignment in general.
- § 344. Agreement to assign.
- § 345. Necessity of consent of insurer.
- § 346. Sufficiency of consent of insurer.
- § 347. Assignment as collateral security.
- § 348. Invalid or inoperative assignment.

**(E) NONPAYMENT OF PREMIUMS OR ASSESSMENTS.**

- § 349. Default as ground of forfeiture in general.
- § 350. Statutory provisions.
- § 351. What law governs.
- § 352. Notice of time for payment.
- § 353. — Necessity.
- § 354. — Sufficiency.
- § 355. — Evidence as to notice.
- § 356. Extension of time for payment.
- § 357. — In general.
- § 358. — By agent or broker.
- § 359. Sufficiency of payment or tender to prevent forfeiture.
- § 360. — In general.
- § 361. — To agent or broker.
- § 362. Excuses for nonpayment.
- § 363. Rights of insured after default.
- § 364. — In general.
- § 365. — Reinstatement.
- § 366. — Election between rights.
- § 367. — Insurance for limited term or amount.
- § 368. — Paid-up policy or value.
- § 369. — Surrender value.
- § 370. — Actions.

**XI. Estoppel, Waiver, or Agreements Affecting Right to Avoid or Forfeit Policy.**

- § 371. Application of doctrines of estoppel and waiver.
- § 372. What conditions may be waived.
- § 373. Liability of insurer to estoppel by acts, conduct, or statements of officers or agents.
- § 374. Powers of officers or agents respecting waiver.
- § 375. — In general.
- § 376. — Effect of provisions of policy.
- § 377. Knowledge or notice of facts in general.



**XI. Estoppel, Waiver, or Agreements Affecting Right to Avoid or Forfeit Policy—Continued.**

- § 378. Knowledge of or notice to officers or agents.
- § 379. Insertion of false answers in application by agent or under his direction.
- § 380. Fraudulent or collusive acts of agent.
- § 381. Form and requisites of express waiver.
- § 382. — In general.
- § 383. — Oral waiver.
- § 384. — Waiver in writing.
- § 385. — Indorsement on policy.
- § 386. — Waiver of provisions of policy as to mode of waiver.
- § 387. — Construction and operation of express waiver.
- § 388. Implied waiver in general.
- § 389. Issuance and delivery of policy without objection.
- § 390. Failure to assert forfeiture or to cancel or rescind policy.
- § 391. Admission of liability on policy.
- § 392. Demand, acceptance, or retention of premiums or assessments.
- § 393. Consent to assignment of policy.
- § 394. Promise to pay loss.
- § 395. Failure to state ground of objection relied on.
- § 396. Requiring, accepting, or retaining proofs of loss.
- § 397. Participating in adjustment of loss.
- § 398. Election to restore or repair.
- § 399. Payment of loss.
- § 400. Provisions of policy against forfeiture.
- § 401. Status of nonforfeitable or paid-up policy.

**XII. Risks and Causes of Loss.**

**(A) MARINE INSURANCE.**

- § 402. Marine risks in general.
- § 403. Perils of the sea.
- § 404. Perils of rivers, lakes, and inland waters.
- § 405. Fire.
- § 406. Enemies and pirates.
- § 407. Thieves.
- § 408. Jettisons.
- § 409. Arrests, restraints, and detentions.
- § 410. Barratry.
- § 411. Collision and liability therefor.
- § 412. Stranding.
- § 413. Proximate cause of loss.
- § 414. Cause inherent in subject-matter insured.
- § 415. Unseaworthiness of vessel.
- § 416. Negligence of owners, master, or crew.
- § 417. Wrongful acts of owners, master or crew.

**(B) INSURANCE OF PROPERTY AND TITLES.**

- § 418. Limitations of risk as to place.
- § 419. — Situation of property insured.

**XII. Risks and Causes of Loss—Continued.****(B) INSURANCE OF PROPERTY AND TITLES—Continued.**

- § 420. — Place of origin of cause of loss.
- § 421. Fire.
- § 422. Explosion.
- § 423. Lightning, wind, tornadoes, and other storms.
- § 424. Accident.
- § 425. Theft.
- § 426. Injury to or death of animals.
- § 426½. Defects in or objections to title insured.
- § 427. Proximate cause of loss.
- § 428. Negligence of insured.
- § 429. Wrongful acts of insured.

**(C) GUARANTY AND INDEMNITY INSURANCE.**

- § 430. Default or other misconduct of officer or employee.
- § 431. Breach of contract guaranteed.
- § 432. Nonpayment of debt insured.
- § 434. Liability incurred for injury to or loss of property.
- § 435. Liability incurred for personal injury or loss of life.
- § 436. Negligence of insured.
- § 437. Wrongful acts of insured.

**(D) LIFE INSURANCE.**

- § 438. Cause of death in general.
- § 439. Death beyond prescribed limits of residence or travel.
- § 440. Time of death.
- § 441. Death while engaged in unauthorized occupation.
- § 442. Death caused by intemperance or use of intoxicating drinks or opium.
- § 443. Death in violation of law.
- § 444. Suicide.
- § 445. — In general.
- § 446. — Effect of insanity.
- § 447. Proximate cause of death.
- § 448. Death caused by beneficiary.

**(E) ACCIDENT AND HEALTH INSURANCE.**

- § 449. What constitutes accident in general.
- § 450. Diligence required of insured.
- § 451. Risks and exceptions in policy in general.
- § 452. Risks of travel, railroads, and other conveyances.
- § 453. Risks of occupation or employment.
- § 454. Bodily infirmities or disease.
- § 455. External, violent, and accidental means of injury.
- § 456. External and visible signs of injury.
- § 457. Poison or contact with poisonous substances.
- § 458. Inhaling gas.
- § 460. Intoxication.
- § 461. Voluntary or unnecessary exposure to danger.
- § 462. Violation of law.

**XII. Risks and Causes of Loss—Continued.****(E) ACCIDENT AND HEALTH INSURANCE—Continued.**

- § 463. Fighting or provoking assault.
- § 464. Intentional injuries.
- § 465. Suicide or self-inflicted injuries.
- § 466. Proximate cause of injury or death.
- § 467. Limitations as to time of death or disability caused by accident.

**XIII. Extent of Loss and Liability of Insurer.****(A) MARINE INSURANCE.**

- § 468. Actual total loss.
- § 469. Constructive total loss.
- § 470. Abandonment.
- § 471. Partial loss in general.
- § 472. Limitation of liability by memorandum clause.
- § 473. Value of subject-matter.
- § 474. — In general.
- § 475. — Valued policies.
- § 476. Insurance of part of value.
- § 477. General average contribution.
- § 478. Exception of particular average or partial loss.
- § 479. Effect of other insurance.
- § 480. Amount of interest of insured.
- § 481. Duties of owners, master, or crew after loss.
- § 482. Salvage.
- § 483. Repairs.
- § 484. — In general.
- § 485. — Deduction of one-third new for old.
- § 486. Wages of crew.
- § 487. Expenditures.
- § 488. — In general.
- § 489. — Under sue and labor clause of policy.
- § 490. Damages incurred or paid.
- § 491. Advances and interest, exchange, and commissions thereon.
- § 492. Deductions and offsets.

**(B) INSURANCE OF PROPERTY AND TITLES.**

- § 493. Total loss.
- § 494. Partial loss in general.
- § 495. Limitation of liability by provisions of policy, by-laws, or charter.
- § 496. Limitation of liability to amount of assessment.
- § 498. Value of property destroyed.
- § 499. — In general.
- § 500. — Valued policies.
- § 501. Insurance of part of value.
- § 502. Amount of damage to property.
- § 503. Amount of interest of insured.
- § 504. Effect of other insurance.
- § 505. Duties of insured after loss.
- § 506. Expenditures.

**XIII. Extent of Loss and Liability of Insurer—Continued.****(B) INSURANCE OF PROPERTY AND TITLES—Continued.**

- § 507. Loss of rent and profits.
- § 507½. Loss by defects in title insured.
- § 508. Deductions and offsets.

**(C) GUARANTY AND INDEMNITY INSURANCE.**

- § 509. Loss by breach of contract guarantied.
- § 511. Loss of debt insured.
- § 512. Liabilities incurred for injuries to persons or property.
- § 513. Expenditures.
- § 514. Damages incurred or paid.

**(D) LIFE INSURANCE.**

- § 515. Amount payable on death.
- § 516. Amount payable on disability before death.
- § 517. Amount of incontestable or paid-up policy.
- § 518. Limitation of liability to amount of assessment.
- § 519. Participation in dividends or profits.
- § 520. — In general.
- § 521. — Policies in mutual companies.
- § 522. Share in tontine fund.
- § 523. Deductions and offsets.

**(E) ACCIDENT AND HEALTH INSURANCE.**

- § 524. Total disability.
- § 525. Confinement to house or bed or under care of physician.
- § 526. Partial disability in general.
- § 527. Particular injuries specified in policy.
- § 528. Immediate, continuous or permanent disability.
- § 529. Death from accident.
- § 530. Limitation of liability by provisions of policy.
- § 531. Classification of risk.
- § 532. Deductions and offsets.

**XIV. Notice and Proof of Loss.**

- § 533. Effect of requirements of policy in general.
- § 534. Statutory provisions.
- § 535. Necessity of notice.
- § 536. Necessity of statement or proof of loss.
- § 537. Persons who may give notice or make proof.
- § 538. Persons to whom notice or proof may be given or made.
- § 539. Time for notice and proof.
- § 540. Sufficiency of notice.
- § 541. Protests and surveys on marine losses.
- § 542. Statements or proofs of loss of or damage to property.
- § 543. Proofs of death of or injury to insured.
- § 544. Production of documentary evidence.
- § 545. Verification of statement or proofs.
- § 546. Certificate of magistrate or other officer.
- § 547. Certificate of physician attending insured.
- § 548. Examination of insured.

**XIV. Notice and Proof of Loss—Continued.**

- § 549. Inspection of person of insured after injury or death.
- § 550. Effect of statements and proofs in general.
- § 551. Defects and amendments.
- § 552. Misstatements or omissions.
- § 553. Fraud or false swearing.
- § 554. Estoppel or waiver as to notice and proofs or defects and objections.
- § 555. — In general.
- § 556. — Powers of officers or agents.
- § 557. — Express waiver.
- § 558. — Implied waiver in general.
- § 559. — Denial of liability.
- § 560. — Failure to object or to state ground of objection.
- § 561. — Adjustment of loss and negotiations for settlement.
- § 562. — Payment of loss.

**XV. Adjustment of Loss.**

- § 563. Effect of provisions of policy in general.
- § 564. Appointment of adjusters.
- § 565. Powers and proceedings of adjusters.
- § 566. Effect of adjustment.
- § 567. Effect of provisions of policy for appraisal or arbitration.
- § 568. Demand of appraisal or arbitration.
- § 569. Agreement for appraisal or arbitration.
- § 570. Appointment of appraisers or arbitrators.
- § 571. Appointment of umpire.
- § 572. Proceedings on appraisal or arbitration.
- § 573. Expenses of proceedings on appraisal or arbitration.
- § 574. Validity and effect of appraisal or award.
- § 575. Failure of appraisal or arbitration.
- § 576. Estoppel or waiver as to adjustment or arbitration.
- § 577. Unauthorized and wrongful acts of adjusters.
- § 578. Refusal to adjust or arbitrate loss.
- § 579. Settlement between parties.

**XVI. Right to Proceeds.**

- § 580. Policy payable to owner of property or interest insured.
- § 581. Policy payable to or for benefit of mortgagee of property insured.
- § 582. Policy for benefit of parties interested in property insured.
- § 583. Life or accident policy payable to insured, his representatives, or estate.
- § 584. Life or accident policy designating beneficiary.
- § 585. — Rights of persons designated in general.
- § 586. — Vested interest of beneficiary.
- § 587. — Change of beneficiary.
- § 588. — Surrender of policy and issue of new policy.
- § 589. — Death of beneficiary.
- § 590. — Rights of creditors.
- § 591. Life policy for benefit of creditor.
- § 591½. Indemnity insurance.

**XVI. Right to Proceeds—Continued.**

- § 592. Policy procured with money wrongfully obtained or stolen.
- § 593. Assignee of policy before loss.
- § 594. Assignment of claim for loss.

**XVII. Payment or Discharge, Contribution, and Subrogation.**

- § 595. Election to rebuild or replace property.
- § 596. Place of payment.
- § 597. Time of payment.
- § 598. Interest on amount of loss.
- § 599. Mode and sufficiency of payment.
- § 600. Effect of payment.
- § 601. Recovery of payment.
- § 602. Damages for refusal of payment.
- § 603. Release or discharge from liability.
- § 604. Contribution between insurers.
- § 605. Subrogation of insurer.
- § 606. — On payment of loss in general.
- § 607. — Under assignment of rights of insured.

**XVIII. Actions on Policies.**

- § 608. Nature and form of remedy.
- § 609. Remedy on Lloyds policies.
- § 610. Statutory provisions.
- § 611. Grounds of actions.
- § 612. Conditions precedent in general.
- § 613. Demand.
- § 614. Defenses.
- § 615. — In general.
- § 616. — Set-off and counterclaim.
- § 616½. Conclusiveness of adjudication in action against insured.
- § 617. Jurisdiction.
- § 618. Venue.
- § 619. Special statutory limitations.
- § 620. Limitations by provisions of policy.
- § 621. — Time before action can be maintained.
- § 622. — Time within which action must be brought.
- § 623. — Waiver of limitation.
- § 624. Parties.
- § 625. Process.
- § 626. — In general.
- § 627. — Against foreign insurance companies.
- § 628. Declaration, complaint, or petition.
- § 629. — Form and requisites in general.
- § 630. — Insurable interest.
- § 631. — Setting forth or annexing policy and accompanying documents.
- § 632. — Description, situation, and condition of subject-matter.
- § 633. — Title or interest of insured.
- § 634. — Performance or waiver of conditions.
- § 635. — Loss and cause thereof.

**XVIII. Actions on Policies—Continued.**

- § 636. — Other insurance.
- § 637. — Assignment of policy.
- § 638. — Nonpayment.
- § 639. — Anticipating defenses.
- § 640. Plea, answer, or affidavit of defense.
- § 641. Replication or reply and subsequent pleadings.
- § 642. Demurrer.
- § 643. Amended and supplemental pleadings.
- § 644. Bill of particulars.
- § 645. Issues, proofs, and variance.
- § 646. Presumptions and burden of proof.
- § 647. Admissibility of evidence.
- § 648. — In general.
- § 649. — Insurable interest.
- § 650. — Application for insurance.
- § 651. — Policy or other contract.
- § 652. — Existence and condition of subject-matter.
- § 653. — Interest or title of insured.
- § 654. — Performance or breach of warranty or condition.
- § 654½. — Payment of premiums.
- § 655. — Fraud or misrepresentation.
- § 657. — Increase of risk.
- § 658. — Loss or damage to property, and cause thereof.
- § 659. — Death of or injury to person insured and cause thereof.
- § 660. — Valuation of property.
- § 661. — Amount of loss.
- § 662. — Notice and proof and adjustment of loss.
- § 663. — Persons entitled to proceeds.
- § 664. — Estoppel or waiver.
- § 665. Weight and sufficiency of evidence.
- § 666. Amount of recovery.
- § 667. Conduct of trial.
- § 668. Questions for jury.
- § 669. Instructions.
- § 670. Verdict and findings.
- § 671. New trial.
- § 672. Judgment.
- § 673. Execution and enforcement of judgment.
- § 674. Appeal and error.
- § 675. Costs and attorney's fees.

**XIX. Reinsurance.**

- § 676. Power and right to reinsure risk.
- § 677. The contract in general.
- § 678. — Requisites and validity.
- § 679. — Construction and operation.
- § 680. Premiums.
- § 681. Cancellation or surrender.
- § 682. Avoidance or forfeiture of contract.

**XIX. Reinsurance—Continued.**

- § 683. Risks and causes of loss.
- § 684. Extent of liability of reinsurer.
- § 685. Notice and proof of loss to reinsurer.
- § 686. Actions on contracts of reinsurance.

**XX. Mutual Benefit Insurance.****(A) CORPORATIONS AND ASSOCIATIONS.**

- § 687. Nature and status in general.
- § 688. Exemption from general laws regulating insurance.
- § 689. Special constitutional and statutory provisions.
- § 690. Authority or license to do business.
- § 691. Regulation and supervision of business.
- § 692. Incorporation and organization.
- § 693. Constitutions and by-laws.
- § 694. Membership.
- § 695. Officers and agents.
- § 696. Powers of association in general.
- § 697. Superior, subordinate, and affiliated bodies.
- § 698. Special funds.
- § 699. Reinsurance.
- § 700. Insolvency and dissolution.
- § 701. — Insolvency and its effect in general.
- § 702. — Rights and liabilities of members on insolvency.
- § 703. — Remedies and proceedings on insolvency.
- § 704. — Reorganization.
- § 705. — Consolidation.
- § 706. — Grounds for dissolution.
- § 707. — Proceedings to enforce dissolution.
- § 708. — Assets and receivers.
- § 709. — Assessments by receivers.
- § 710. — Distribution of assets and funds.

**(B) THE CONTRACT IN GENERAL.**

- § 711. Nature of the contract.
- § 712. What law governs.
- § 713. Application and acceptance.
- § 714. Form and requisites of certificates of membership.
- § 715. Application as part of contract.
- § 716. Charter or articles of incorporation as part of contract.
- § 717. Constitution, by-laws, or rules as part of contract.
- § 718. — Existing provisions.
- § 719. — Subsequent provisions or amendments.
- § 720. Delivery and acceptance of certificate.
- § 721. Payment of dues.
- § 722. Validity in general.
- § 723. Misrepresentation, fraud, or breach of warranty.
- § 724. Estoppel or waiver as to defects or objections.
- § 725. Modification and reformation.
- § 726. Construction and operation in general.



**XX. Mutual Benefit Insurance—Continued.****(B) THE CONTRACT IN GENERAL—Continued.**

- § 726½. Classification of risk.
- § 727. Assignment or other transfer.
- § 728. — In general.
- § 729. — As collateral security.
- § 730. Cancellation, surrender, abandonment, or rescission.

**(C) DUES AND ASSESSMENTS.**

- § 731. Nature and grounds of obligation.
- § 732. Grounds of assessment.
- § 733. Power and duty to make assessment.
- § 734. Liability to assessment.
- § 735. Amount of assessment.
- § 736. Levy of assessment.
- § 737. Notice of assessment.
- § 738. Waiver of objections to assessment.
- § 739. Time for payment.
- § 740. Mode and sufficiency of payment.
- § 741. Effect of payment.
- § 742. Actions for dues or assessments.
- § 743. Refunding or recovery of dues or assessments paid.

**(D) FORFEITURE OR SUSPENSION.**

- § 744. Nature and grounds in general.
- § 745. Statutory provisions against forfeiture.
- § 746. Effect of suspension of subordinate body.
- § 747. Effect of expulsion or suspension of member.
- § 748. Violations of terms or conditions of contract.
- § 749. Nonpayment of dues or assessments.
- § 750. — Default as a ground of forfeiture in general.
- § 751. — Notice of time for payment.
- § 752. — Extension of time for payment.
- § 753. — Sufficiency of payment or tender to prevent forfeiture.
- § 754. — Excuses for nonpayment.
- § 755. Estoppel or waiver affecting right of forfeiture.
- § 756. Notice and proceedings to give effect to forfeiture.
- § 757. Effect of forfeiture or suspension.
- § 758. Reinstatement.
- § 759. — Right in general.
- § 760. — Payment of arrears.
- § 761. — Health and condition of insured.
- § 762. — Proceedings.
- § 763. — Waiver of objections.
- § 764. — Effect.
- § 765. Remedies for relief against forfeiture.

**(E) BENEFICIARIES AND BENEFITS.**

- § 766. Status of beneficiaries in general.
- § 767. Insurable interest of beneficiary.
- § 768. Persons who may be beneficiaries.

**XX. Mutual Benefit Insurance—Continued.****(E) BENEFICIARIES AND BENEFITS—Continued.**

- § 769. — In general.
- § 770. — Statutory provisions.
- § 771. — Provisions of charter or by-laws.
- § 772. Designation of beneficiary.
- § 773. — In general.
- § 774. — Revocation.
- § 775. — By will.
- § 776. Failure of beneficiaries.
- § 777. Invalid or ineffective designation.
- § 778. Failure to make designation.
- § 779. Change of beneficiary.
- § 780. — Right to change in general.
- § 781. — Consent of association.
- § 782. — Rights of beneficiary previously designated.
- § 783. — Vested interest of beneficiary.
- § 784. — Mode of changing designation.
- § 785. Death of beneficiary before insured.
- § 786. Loss or contingency on which benefits become payable.
- § 787. — In general.
- § 788. — Suicide.
- § 789. Notice and proof of loss.
- § 790. Discretion of association as to allowing benefits.
- § 791. Amount of benefits.
- § 792. Adjustment of loss.
- § 793. Rights of beneficiaries to proceeds.
- § 795. Rights of representatives of insured.
- § 796. Rights of representatives of beneficiary.
- § 797. Rights of creditors.
- § 798. Payment of benefits.
- § 799. Interest on amount of benefits.
- § 800. Damages for refusal of payment.
- § 801. Release or discharge of association from liability.

**(F) ACTIONS FOR BENEFITS.**

- § 802. Nature and form of remedy.
- § 803. Provisions of charter, by-laws, or certificate of membership.
- § 804. — Right of action in general.
- § 805. — Resort to courts for settlement of disputes.
- § 806. Grounds of action.
- § 807. Conditions precedent in general.
- § 808. Demand.
- § 809. Defenses.
- § 810. Jurisdiction.
- § 811. Venue.
- § 812. Limitations.
- § 813. Parties.
- § 814. Process and appearance.

**XX. Mutual Benefit Insurance—Continued.****(F) ACTIONS FOR BENEFITS—Continued.**

- § 815. Pleading.
- § 816. Evidence.
- § 817. — Presumptions and burden of proof.
- § 818. — Admissibility.
- § 819. — Weight and sufficiency.
- § 820. Amount of recovery.
- § 821. — In general.
- § 822. — Limitation to particular assessment or fund.
- § 823. Trial.
- § 824. — Conduct in general.
- § 825. — Questions for jury.
- § 826. — Instructions.
- § 827. — Verdict and findings.
- § 828. Judgment.
- § 829. Execution and enforcement of judgment.
- § 830. — In general.
- § 831. — Against particular fund.
- § 832. — Performance of specific acts.
- § 833. Appeal and error.
- § 834. Costs.

*Cross-References.*

- |   |  |
|---|--|
| <p>Accident insurance as evidence on issue of contributory negligence of person injured, see "Negligence," § 132.</p> <p>Acquittal on charge of burning property as bar to defense on policy, see "Judgment," § 559.</p> <p>Actionable deceit in making insurance contract, see "Fraud," §§ 11, 13.</p> <p>Actionable deceit in procuring adjustment of loss, see "Fraud," § 22.</p> <p>Actionable deceit in sale of insurance property and business, see "Insurance," § 11.</p> <p>Action against state insurance superintendent, as action against state, see "States," § 191.</p> <p>Action on insurance policy as an action on contract or in tort, see "Action," § 27.</p> <p>Action on policy by heirs, see "Descent and Distribution," § 91.</p> <p>Acts and declarations of conspirators, see "Criminal Law," §§ 423, 427.</p> <p>Adjusted loss as liquidated damages, see "Damages," § 78.</p> <p>Admissions by officers, agents, and employees of insurance companies, see "Evidence," § 244.</p> <p>Adoption of English statute relating to insurance, see "Common Law," § 12.</p> <p>Allowing plaintiff in action on policy to prove waiver of terms of policy without alleging such waiver as denial of equal protection of the laws, see "Constitutional Law," § 249.</p> | <p>Allowing plaintiff to prove waiver of terms of policy without alleging such waiver as depriving defendant of his property without due process of law, see "Constitutional Law," § 249.</p> <p>Amendment of charter as depriving stockholders of property without due process of law, see "Constitutional Law," § 278.</p> <p>Appeal by administrator in action on policy, see "Executors and Administrators," § 455.</p> <p>Application of insurance premiums paid by borrowers in liquidation of debt to building and loan association, see "Building and Loan Associations," § 34.</p> <p>Application to school purposes of revenue derived from foreign companies, see "Schools and School Districts," § 17.</p> <p>Appropriation of school funds to insurance of school property, see "Schools and School Districts," § 19.</p> <p>Assignment of policy as affecting bankrupt estates, see "Bankruptcy," §§ 143, 172, 299.</p> <p>Attachment of interest under insurance contract, see "Attachment," § 57.</p> <p>Authority of agent of bailee to procure insurance, see "Principal and Agent," § 101.</p> <p>Authority of receiver in bankruptcy to waive notice of proof of loss, see "Bankruptcy," § 114.</p> <p>Authority of school trustee to insure school property, see "Schools and School Districts," § 79.</p> <p>Avoidance of policy by infant, see "Infants," § 58.</p> |
|---|--|

Bankruptcy proceedings against insurance corporation, see "Bankruptcy," § 72.  
 Benefit of limitation as depending on designation of agent for service of process on foreign association, see "Corporations," § 667.  
 Best and secondary evidence, see "Criminal Law," §§ 400, 402; "Evidence," §§ 157-187.  
 Bona fide purchasers of premium or deposit notes, see "Bills and Notes," §§ 332, 342, 367.  
 Bringing action in name of real party in interest, see "Parties," § 6.  
 Bringing in new parties, see "Parties," § 54.  
 Carrier as insurer against loss of goods, see "Carriers," § 108.  
 Carrier's liability for failure to transport insurance policy, see "Carriers," § 94.  
 Charging infant beneficiary as trustee, see "Infants," § 27.  
 Collection of life insurance as motive for homicide, see "Homicide," § 166.  
 Combinations to control business, see "Monopolies," §§ 18, 23.  
 Competency of witnesses and testimony in action on policy, see "Witnesses," §§ 129, 139, 140, 142, 143, 144, 150, 154, 158, 161, 163, 164, 166, 167, 184, 211, 219, 363.  
 Compromise of claim by personal representative of insured, see "Executors and Administrators," § 87.  
 Computation of time incidental to insurance, see "Time," §§ 9, 10, 14.  
 Conclusiveness of foreign judgment, see "Judgment," § 822.  
 Conclusiveness of judgment as to right to proceeds, see "Judgment," § 683.  
 Concurrent and conflicting jurisdiction in action on policy, see "Courts," §§ 27, 493.  
 Conformity of findings of court to pleadings in action by insured against agent, see "Trial," § 396.  
 Consideration for bond of indemnity to insurance company, see "Indemnity," § 4.  
 Conspiracy as offense by persons dealing with insurers, see "Conspiracy," § 43.  
 Constitution and by-laws of mutual benefit insurance as impairing the obligation of contracts, see "Constitutional Law," § 156.  
 Construction and effect of contracts incidental to insurance, see "Contracts," §§ 9, 38, 53, 54, 99, 108, 138, 165, 171, 198, 321.  
 Construction of contract of hirer of vessel to pay insurance, see "Shipping," § 39.  
 Construction of statutes in favor of constitutionality, see "Constitutional Law," § 48.  
 Construction of statutes relating to insurance in general, see "Statutes," §§ 231, 266.  
 Contract as constituting doing of business by foreign corporation, see "Corporations," § 642.  
 Contracts for payment of annuities, see "Annuities."  
 Contracts of indemnity as contract of insurance, see "Indemnity," § 6.  
 Courts invested with appellate jurisdiction, see "Courts," § 213.  
 Decisions of state courts as to requisites, validity, construction, operation and effect

of contracts of insurance as authority in federal courts, see "Courts," §§ 366, 372.  
 Declaration of insured as evidence against beneficiary, see "Evidence," § 252.  
 Defects and objections to parties, see "Parties," § 78.  
 Defenses available to administrator as against third person claiming interest in policy on life of decedent, see "Executors and Administrators," § 433.  
 Delegation of legislative power to insurance commission, see "Constitutional Law," § 60.  
 Delegation of power to Secretary of State to consent to reinsurance, see "Constitutional Law," § 62.  
 Denial of equal protection of laws, see "Constitutional Law," §§ 230, 240.  
 Depositions taken at coroner's inquest as evidence, see "Evidence," § 157.  
 Direction of verdict for receiver of insurance company as denial of right to trial by jury, see "Jury," § 34.  
 Discharge of claim to insurance by novation in general, see "Novation," § 5.  
 Domicile or place of business of insurance company, see "Corporations," § 52.  
 Duty of factor of goods consigned to him for sale, see "Factors," § 16.  
 Duty of warehousemen to insure goods stored, see "Warehousemen," § 22.  
 Effect as to creditors of transfer of insured property or proceeds of insurance, see "Fraudulent Conveyances," §§ 39, 48, 51, 179, 181, 315.  
 Effect of accord and satisfaction incidental to insurance, see "Accord and Satisfaction," §§ 7, 10, 12, 16, 17, 22, 24.  
 Effect of amendment of pleadings on right to default judgment in action against creditor's assignee for excess over amount of debt, see "Judgment," § 102.  
 Effect of assignment for creditors, see "Assignments for Benefit of Creditors," §§ 12, 180, 198, 411.  
 Effect of contract exempting railroad company from liability for destruction of property by fire, see "Railroads," § 469.  
 Effect of partial invalidity of statutory regulation, see "Statutes," § 64.  
 Effect of receipts given by defaulting officer of mutual benefit insurance society for money paid to him, see "Payment," § 54.  
 Effect of relation of master and servant on rights of one of parties to insurance contract, see "Master and Servant," §§ 267, 301, 341.  
 Effect of statute giving railroad companies insurable interest in property along right of way on liability for damage by fire, see "Railroads," § 468.  
 Effect of stipulations in action for benefits, see "Stipulations," §§ 14, 18.  
 Election of remedies on insurance policy, see "Election of Remedies," § 8.  
 Empowering insurance commissioner to institute suits for liquidation of insolvent or fraudulently conducted insurance company as deprivation of property without due process of law, see "Constitutional Law," § 305.

- Equitable lien on proceeds of insurance, see "Liens," § 7.
- Estoppel of beneficiary assigning policy to assert its invalidity, see "Estoppel," § 66.
- Estoppel of wife by assignment to husband, see "Husband and Wife," § 129.
- Estoppel to deny corporate powers, see "Corporations," § 388.
- Evidence of corporate existence of insurance company, see "Criminal Law," § 567.
- Evidence of death of insured, see "Death," §§ 1-6.
- Evidence of results of experiments in action on policy, see "Evidence," § 150.
- Evidence of value of property in general, see "Evidence," § 113.
- Execution on interests under policies, see "Execution," §§ 43, 364.
- Exempting benefits to be paid by fraternal association as denying the equal protection of the laws, see "Constitutional Law," § 249.
- Exemption of insurance companies and policies from taxation, see "Taxation," § 230.
- Exemption of proceeds of insurance from legal process, see "Exemptions," §§ 3, 50, 57.
- Exemption of proceeds of insurance on homestead, see "Homestead," § 79.
- Failure to procure insurance as breach of charter party, see "Shipping," § 52.
- False affidavit or testimony as perjury, see "Perjury," §§ 5, 11.
- Foreclosure of mortgage for nonpayment of insurance, see "Mortgages," § 400.
- Garnishment of interests under policies, see "Garnishment," § 34.
- Gift of policy, see "Gifts," §§ 10, 28.
- Ground for mitigation of damages, see "Damages," § 64.
- Impairing obligation of contracts, see "Constitutional Law," § 154.
- Imputations concerning insurance as slanderous, see "Libel and Slander," §§ 7, 10.
- Increase of insurance risk as element of nuisance, see "Nuisance," § 4.
- Insurance contract as affected by custom or usage, see "Customs and Usages," §§ 5, 7, 14, 15, 17, 21.
- Insurance contract as affected by statute of frauds, see "Frauds, Statute of," §§ 23, 33, 82, 129, 131, 143.
- Insurance of demised premises, rights and liabilities as between landlord and tenant, see "Landlord and Tenant," §§ 156, 192.
- Interest of married woman as separate property, see "Husband and Wife," § 110.
- Intervention, see "Parties," § 40.
- Joinder and misjoinder of causes, see "Action," §§ 38, 47, 50.
- Joinder of insurer and insured in action to recover for property negligently destroyed by fire, see "Parties," §§ 16, 20.
- Judgment on foreclosure for reimbursement of payments for insurance, see "Mortgages," § 490.
- Jurisdiction of action by receiver to declare lien on property for assessment dependent on amount or value in controversy, see "Courts," § 120.
- Jurisdiction of action on marine insurance, see "Admiralty," § 10.
- Jurisdiction of federal courts as dependent on diverse citizenship, see "Courts," § 307.
- Jurisdiction of federal courts in action on policy as dependent on amount in controversy, see "Courts," § 328.
- Jurisdiction of federal court to compel State Auditor to issue certificate to foreign insurance company, see "Courts," § 303.
- Jurisdiction of federal court to restrain actions on policy in order to adjust the liability of the respective insurers, see "Courts," § 264.
- Jurisdiction of federal court to restrain state officer from enforcing license tax as dependent on suit being against state, see "Courts," § 303.
- Jurisdiction of justice, see "Justices of the Peace," §§ 39, 40.
- Laws affecting insurance privileges as impairing obligation of contracts, see "Constitutional Law," § 131.
- Laws authorizing recovery of attorney's fees as denying the equal protection of the laws, see "Constitutional Law," § 248.
- Laws authorizing recovery of attorney's fees as deprivation of property without due process of law, see "Constitutional Law," § 317.
- Laws authorizing taxation of attorney's fee as class legislation, see "Constitutional Law," § 208.
- Laws establishing rule of evidence as impairing obligation of contracts, see "Constitutional Law," § 175.
- Laws making it unlawful for two or more companies to agree as to kind of commissions to be allowed agents as interfering with liberty to contract, see "Constitutional Law," § 89.
- Laws prohibiting forfeiture of policies as class legislation, see "Constitutional Law," § 208.
- Laws providing that insurance company shall not deny the value of the property as stated in the policy as impairing obligation of contracts, see "Constitutional Law," § 166.
- Laws regulating contracts as infringing liberty of contract, see "Constitutional Law," § 89.
- Laws relating to forfeiture of policies as impairing obligation of contract, see "Constitutional Law," § 166.
- Laws relating to mutual benefit insurance companies as impairing obligation of contracts, see "Constitutional Law," § 154.
- Liability of companies and property to taxation, see "Taxation," §§ 137-141.
- Liability of proceeds to transfer tax, see "Taxation," § 867.
- Life insurance payable to another, as creating trust, see "Trusts," § 37.
- Limitations as affecting enforcement of assessments, see "Limitation of Actions," §§ 35, 65, 105.
- Limitations of action on policy as affected by general statutes, see "Limitation of Actions," §§ 2, 14, 16, 35, 46, 65, 82, 88, 102, 169, 192.
- Mandamus to compel assessment to pay judgment, see "Mandamus," § 136.

- Mandamus to compel disclosure of membership of mutual company, see "Mandamus," § 139.
- Mandamus to compel issue of license or certificate to insurance company, see "Mandamus," § 87.
- Maritime liens for insurance premiums, see "Maritime Liens," § 13.
- Married women as members of mutual insurance companies, see "Husband and Wife," § 98.
- Measure of damage for conversion of policy, see "Trover and Conversion," § 50.
- Measure of damages for deceit in inducing plaintiff to take a life policy, see "Fraud," § 59.
- Mode of assessment of insurance companies, see "Taxation," § 387.
- Negligence of fire insurance patrol in use of street, see "Municipal Corporations," § 705.
- Parol or extrinsic evidence of fraud, see "Evidence," § 434.
- Parol or extrinsic evidence to contradict or vary contract, see "Evidence," §§ 405, 408, 411, 413, 414, 417, 418, 419, 424, 427, 433, 439-445.
- Parties defendant in action to set aside award, see "Parties," § 25.
- Passage of statute regulating form of policy, see "Statutes," § 15.
- Payment by husband out of community funds of premiums on policy insuring life of wife, see "Husband and Wife," § 265.
- Payment of proceeds to ancillary administrator, see "Executors and Administrators," § 519.
- Payment to mortgagee of proceeds of insurance as payment of debt, see "Mortgages," § 298.
- Penalty for failure to pay proceeds of insurance within specified time as denial of equal protection of the laws, see "Constitutional Law," § 247.
- Pleading in justices' courts, see "Justices of the Peace," §§ 92, 101.
- Police insurance funds, see "Municipal Corporations," § 187.
- Power of city to insure public buildings, see "Municipal Corporations," § 716.
- Power of city to loan its credit to mutual insurance company, see "Municipal Corporations," § 873.
- Power of federal court to restrain proceedings in state court to determine liability of insurers, see "Courts," § 508.
- Privileges of citizens of United States, see "Constitutional Law," § 206.
- Proceeds of insurance as advancement, see "Descent and Distribution," § 95.
- Proceeds of life insurance as property subject to allowance to widow, see "Executors and Administrators," § 181.
- Procuring payment of insurance by false pretenses, see "False Pretenses," §§ 23, 27, 35, 49.
- Production and inspection of writings, see "Discovery," §§ 2, 96.
- Property rights within constitutional inhibition against deprivation of property without due process of law, see "Constitutional Law," § 277.
- Recovery on insurance policy in assumpsit, see "Assumpsit, Action of," § 6.
- Regulation of insurance as regulation of commerce, see "Commerce," § 45.
- Regulation of insurance companies as denial of equal protection of laws, see "Constitutional Law," § 240.
- Regulations of insurance as depriving persons of property without due process of law, see "Constitutional Law," § 296.
- Regulations relating to license fees and taxes in general, see "Licenses," §§ 6, 7.
- Release of liability under insurance policy, see "Release," §§ 13, 24, 57, 58.
- Remedy for reinstatement by motion in suit to restrain collection of assessments, see "Motions," § 2.
- Remedy of insurance company in case of fraud, see "Fraud," § 31.
- Removal of causes from state to federal court, see "Removal of Causes," §§ 3, 19, 74, 75, 86.
- Repeal of statutes, see "Statutes," §§ 139, 161, 162.
- Representation of corporation by officers in submitting loss to appraisers, see "Corporations," § 418.
- Restraining action on insurance policy, see "Injunction," § 26.
- Restraining individuals from acting as agents of foreign insurance company as breach of right to pursue lawful business, see "Constitutional Law," § 88.
- Restraining insurance officers, see "Injunction," § 75.
- Retroactive effect of amendatory act as to forfeiture of insurance policy, see "Statutes," § 270.
- Review by federal Supreme Court of judgment of district court of Porto Rico, see "Courts," § 387.
- Right to maintain trover for wrongful conversion of policy, see "Trover and Conversion," § 16.
- Right of action on policy by foreign administrator, see "Executors and Administrators," § 524.
- Rights of trustee in bankruptcy in policy on life of bankrupt, see "Bankruptcy," § 143.
- Rights and liabilities in relation to general average, see "Shipping," §§ 186-202.
- Rights and liabilities of life tenant as to insurance of property, see "Life Estates," § 19.
- Rights in life policy passing to trustee in insolvency, see "Insolvency," § 55.
- Rights of adopted children to proceeds, see "Adoption," § 21.
- Rights of husband or wife to policy on divorce, see "Divorce," § 249.
- Rights of insurer to salvage of abandoned property, see "Salvage," § 18.
- Rights of interpleader to proceeds and substitution of claimant, see "Interpleader," §§ 10, 11, 40.
- Rights of receiver to recover proceeds of insurance, see "Receivers," §§ 67, 68.
- Rights of representatives of decedents' estates as to proceeds of insurance, see "Executors and Administrators," §§ 46, 76, 86, 528.

Rights of widow of insured as heir, see "Descent and Distribution," § 52.  
 Rights under will to proceeds of insurance, see "Wills," §§ 6, 10, 482, 571, 746.  
 Right to maintain action to obtain construction of obligation of members, see "Action," § 6.  
 Right to proceeds of insurance as affected by bankruptcy, see "Bankruptcy," §§ 143, 396.  
 Right to proceeds of insurance as between husband and wife, see "Husband and Wife," §§ 124, 147, 171, 184, 193, 199, 249, 274.  
 Rights to proceeds of insurance as between heirs and representatives of deceased, see "Descent and Distribution," §§ 5, 8, 30.  
 Rights to proceeds of insurance as between vendor and purchaser, see "Vendor and Purchaser," § 199.  
 Separate or subsequent oral agreement affecting contract, see "Evidence," §§ 439-445.  
 Set-off in action against agent to recover premiums, see "Set-Off and Counterclaim," § 28.  
 Specific performance of insurance contract, see "Specific Performance," § 78.  
 Splitting causes in action on policy, see "Action," § 53.  
 Stamping insurance contract, see "Internal Revenue," § 19.  
 State law as rules of decisions in federal court, see "Courts," § 359.  
 Statements of conclusions in affidavit to set aside service on managing agent of company, see "Affidavits," § 17.  
 Statute providing for preparation of standard policy by insurance commissioner as delegation of legislative power, see "Constitutional Law," § 60.  
 Statute providing that no life insurance company shall make any distinction or discrimination in rates in favor of individuals as being in restraint of trade, see "Constitutional Law," § 89.  
 Statutory provisions as to authority of federal courts, see "Courts," § 363.

Stipulations for maturity of mortgage debt on failure to keep up insurance, see "Mortgages," § 401.  
 Stipulations in contract as to insurance as usury, see "Usury," § 59.  
 Subject and title of acts, see "Statutes," §§ 113, 114, 116, 119.  
 Subrogation of agent to insurer's right to collect premiums, see "Subrogation," § 10.  
 Surety companies, see "Principal and Surety," §§ 52-58.  
 Surrender value of policy as affecting right of trustee in bankruptcy in policy on life of bankrupt, see "Bankruptcy," § 143.  
 Tender of premium, see "Tender," § 16.  
 Tender of proceeds as a defense, see "Tender," § 27.  
 Tender of proceeds to party interested, see "Tender," § 26.  
 Threats to accuse of burning with intent to defraud, see "Threats," § 5.  
 Time for application to open judgment, see "Judgment," § 386.  
 Trustee in bankruptcy as party to action on policy, see "Bankruptcy," § 299.  
 Validity of contract with minor, see "Infants," § 47.  
 Validity of covenant not to sublet as rendering lessee liable for extra insurance premium resulting therefrom, see "Landlord and Tenant," § 76.  
 Validity of law providing that in actions on policies defendants shall not deny the value of the property stated in the policy, see "Constitutional Law," §§ 190, 206.  
 Validity of policy on saloon fixtures as affected by failure to obtain license, see "Intoxicating Liquors," § 327.  
 Validity of regulation giving fire insurance patrol right of way in streets, see "Municipal Corporations," § 703.  
 Valuation of policy advanced to heir, see "Descent and Distribution," § 112.  
 Verdict of coroner's jury as evidence of cause of death in action on policy, see "Coroners," § 22.  
 What constitutes payment by draft for proceeds of insurance, see "Payment," § 18.

## I. CONTROL AND REGULATION IN GENERAL.

### Cross-References.

Exemption of mutual benefit insurance associations from general insurance laws, see post, § 688.  
 Combination to control business, see "Monopolies," § 18.  
 Laws making it unlawful for two or more companies to enter into agreements as to the amount of commissions to be allowed agents as interfering with liberty to contract, see "Constitutional Law," § 89.  
 Loss affecting insurance privileges as impairing obligation of contracts, see "Constitutional Law," § 131.  
 Regulation as denial of equal protection of laws, see "Constitutional Law," § 240.  
 Regulation of, as regulation of commerce, see "Commerce," § 45.

## § 1. Right to insure in general.

### Cross-Reference.

Right to reinsure, see post, § 676.

(a) Where members of an association pay an admission fee, monthly dues, and assessments, as ordered from time to time, and from funds thus raised the association contracts to repay to the members certain sums in case of sickness or death, or at the expiration of a fixed number of years, the business is an insurance business, and cannot be carried on by a corporation whose certificate of incorporation stated only that it is "for social or fraternal beneficial purposes, or both."—*Order of International Fraternal*

*Alliance v. State*, 77 Md. 547, 26 Atl. 1040. [Cited and annotated in 38 L. R. A. 40, 55, as to whether benefit association is insurance company.]

## § 2. What constitutes insurance.

### Annotation.

What constitutes insurance.—47 L. R. A. (N. S.) 290, note.

## § 3. Power to control and regulate.

## § 4. Constitutional and statutory provisions.

### Cross-References.

Mutual benefit insurance, see post, § 689.  
 Subjection to statute relating to effect of misrepresentations, see post, § 250.  
 Abridging privileges of citizens of United States, see "Constitutional Law," § 206.  
 Adoption of English statute relating to insurance, see "Common Law," § 12.  
 As authority in federal courts, see "Courts," § 363.  
 Construction of statute in favor of constitutionality, see "Constitutional Law," § 48.  
 Denial of equal protection of laws, see "Constitutional Law," § 240.  
 Impairing obligation of contracts, see "Constitutional Law," § 154.  
 Repeal by implication of special by general act, see "Statutes," § 162.  
 Repeal of provisions of act amended authorizing certain cities to impose a license tax on insurance companies for the benefit of voluntary fire departments, see "Statutes," § 139.  
 Subject and title of acts, see "Statutes," §§ 113, 114, 119.

## § 5. Authority or license to do business.

### Cross-References.

Mutual benefit insurance, see post, § 690.  
 Mandamus to compel issue of license or certificate, see "Mandamus," § 87.  
 Validity of act providing for revocation of authority to do business on removal of cause by company from state to federal court, see "Removal of Causes," § 3.

## § 6. Unauthorized insurance.

## § 7. License fees and taxes.

### Cross-References.

Evidence of usage in suit to restrain collection of tax, see "Customs and Usages," § 5.  
 Exemption from general taxation, see "Taxation," § 230.  
 Taxation in general, see "Taxation," §§ 136-141.  
 Validity of regulations relating to license fees and taxes in general, see "Licenses," §§ 6, 7.

## § 8. Resources and securities.

### Cross-References.

Disposition of securities on insolvency, see post, §§ 50, 70.

Guaranty obligations for protection of company, see post, § 60.

Special funds created by contract and for protection of company, see post, §§ 37, 58.

## § 9. Reports and statements.

### Cross-Reference.

Statement or report as basis of action for deceit, see "Fraud," §§ 11, 21.

## § 10. Supervision by public officers or courts.

### Cross-References.

Delegation of legislative power to insurance commission, see "Constitutional Law," § 60.  
 Injunction against officer, see "Injunction," § 75.  
 Passage of law delegating to insurance commissioner power to prescribe form of policy, see "Statutes," § 15.

## § 11. Conduct of business.

## § 12. Regulation of agents and brokers.

### Cross-Reference.

Noncompliance with regulations as affecting right to compensation, see post, § 84.

(a) Under Code 1904, art. 23, § 200, held, that an insurance broker's license cannot be issued to a corporation, notwithstanding art. 1, § 14, providing that "person" shall include corporations, unless such construction would be unreasonable.—*Shehan v. I. Tanenbaum, Son & Co.*, 121 Md. 283, 88 Atl. 146. (See Code 1911, art. 1, § 14; art. 23, § 219; *Id.* [vol. 3], art. 23, § 218; act 1916, §§ 219A, 219B.)

## § 13. Lloyds associations.

### Annotation.

Restrictions on insurance by unincorporated associations or individuals; Lloyds associations.—25 L. R. A. 238, note.

## § 14. Boards of underwriters.

## §§ 15-26. Foreign underwriters or companies and their agents.

### Cross-References.

Liability of agent for insured for failure to procure insurance, see post, § 111.  
 Application to school purposes of revenue derived from foreign companies for doing business in state, see "Schools and School Districts," § 17.  
 Denial of equal protection of laws, see "Constitutional Law," § 230.  
 General taxation, see "Taxation," §§ 162-168.  
 Restraining individuals from acting as agents of foreign insurance company as abridging right to pursue lawful business, see "Constitutional Law," § 88.



Subjection to special requirements as discrimination against citizens of other states, see "Constitutional Law," § 207.  
Taxation of property and premiums or receipts, see "Taxation," §§ 162-168.

#### *Actions.*

Service of process on foreign insurance company, see post, § 627.

Action against state insurance superintendent as action against state, see "States," § 191.

Jurisdiction of federal courts to enjoin state officer from enforcing license tax as dependent on suit being against state, see "Courts," § 303.

Jurisdiction of federal court to compel auditor of state to issue certificate to foreign insurance company, see "Courts," § 303.

Jurisdiction of justice of the peace, see "Justices of the Peace," §§ 39, 40.

Process, procuring service by fraud, see "Process," § 65.

Removal of cause from state to federal court, see "Removal of Causes," § 112.

Security for costs, see "Costs," § 110.

#### *Annotation.*

Restrictions on business of foreign insurance companies.—24 L. R. A. 298, note.

The effect on insurance where the statutes regulating the business of foreign insurance companies have not been complied with.—20 L. R. A. 405, note.

(a) Code 1888, art. 23, § 124, providing that, before a foreign insurance company can do business in Maryland, it must appoint, in writing, an agent on whom service may be made, and such writing must agree that any legal process served on the agent shall be of the same legal force as if served on the company within the state, does not authorize a bill in equity by a member of a mutual insurance company, against the company, located in another state, for the purpose of restraining the collection of assessments alleged to be excessive and fraudulent, since involving the regulation of the internal affairs of a foreign corporation.—*Condon v. Mutual Reserve Fund Life Ass'n*, 89 Md. 99, 42 Atl. 944, 44 L. R. A. 149, 73 Am. St. Rep. 169. (See Code 1911, art. 23, § 182.) [Cited and annotated in 70 L. R. A. 539, 541, on nonresident's right to sue foreign corporation.]

(b) An applicant for insurance applied to a broker in Maryland, who procured the insurance through a broker in New York, from a company in Massachusetts, the policy passing through the hands of the two brokers. The Maryland broker delivered it to applicant, who thereupon paid him the premium,

which was forwarded to the company through the New York broker, each of the brokers deducting his commission therefrom. All of these acts were done with the consent of the company. *Held*, that, although the Maryland broker was the agent of applicant for procuring insurance, he was the agent of the company in delivering the policy; and hence, where the company had not complied with Code 1888, art. 23, §§ 118, 119, 124, making it unlawful for a foreign insurance company "to take risks or transact any insurance business in this state" unless it has performed certain conditions, it could not enforce the policy.—*Stevens v. Rasin Fertilizer Co.*, 87 Md. 679, 41 Atl. 116. (See Code 1911, art. 23, §§ 159, 161, 182.) [Cited and annotated in 63 L. R. A. 841, 843, 852, on conflict of laws as to insurance contracts; in 38 L. R. A. (N. S.) 640, on insurance broker as agent for the insured.]

### §§ 27, 28. Penalties for violations of regulation.

#### *Cross-Reference.*

Giving rebate as rendering note for premium void, see post, § 184.

### § 29. Offenses by insurers.

### § 30. Offenses by agents or brokers.

#### *Cross-Reference.*

Effect of partial invalidity of statutory regulation, see "Statutes," § 64.

### § 31. Offenses by persons dealing with insurers.

#### *Cross-Reference.*

Variance in prosecution for conspiracy to defraud, see "Conspiracy," § 43.

## II. INSURANCE COMPANIES.

#### *Cross-References.*

Domicile or place of business, see "Corporations," § 52.

Evidence of corporate existence of insurance company, see "Criminal Law," § 567.

Liability to taxation, see "Taxation," §§ 137-141, 230.

Mode of assessment for taxation, see "Taxation," § 387.

Surety companies in general, see "Principal and Surety," §§ 52-58.

### (A) STOCK COMPANIES.

#### *Cross-Reference.*

Amendment of charter as depriving stockholders of property without due process of law, see "Constitutional Law," § 278.

### § 32. Incorporation, organization, and existence.

#### Cross-Reference.

Mutual benefit insurance companies, see post, § 692.

(a) Where a surety company, under a special charter, paid all its bonds and franchise taxes and was granted a license to do business in accordance with the Maryland laws, and actually commenced business, made its report to the insurance commissioner for the previous year, and the next year its powers were extended by a new act of the Legislature, in which the company was referred to as a corporation, a stockholder could not successfully claim that the corporation was nonexistent because of an alleged failure to pay in, in cash, a sufficient amount of the corporation's capital.—*Munich Re-Insurance Co. v. United Surety Co.*, 113 Md. 200, 77 Atl. 579.

(b) Where complainant waived its right to rescind its subscription and reinsurance contract with defendant surety company for alleged fraud, consisting of failure to perform a condition requiring payment of a certain proportion of the corporation's capital stock in cash, pursuant to which waiver the balance of the stock was subscribed and paid for, complainant could not thereafter successfully insist that the corporation had no power to make such contracts because of the fact that it was not authorized to do business at the time they were made.—*Munich Re-Insurance Co. v. United Surety Co.*, 113 Md. 200, 77 Atl. 579.

§§ 33-35. (See Analysis.)

### § 36. Franchises and powers.

#### Cross-References.

Estoppel to plead ultra vires, see post, § 141.

Power to reinsure, see post, § 676.

Statutory limitations on powers of title insurance company, see ante, § 4.

Estoppel to deny corporate powers in general, see "Corporations," § 388.

(a) Code 1888, art. 23, § 69, provides that no loan of money shall be made by any corporation to any stockholder, but that the section shall not apply to any building or homestead association, or any association for the loaning of money on real or personal property. *Held*, that the exception did not include an insurance company organized

under art. 23, § 113, which gives power to the company to advance money, securities, or credits on any property, real or personal, since the exception referred only to companies, such as building associations, organized for the purpose of loaning money to their members.—*Fisher v. Parr*, 92 Md. 245, 48 Atl. 621. (See Code 1911, art. 23, §§ 75, 153.)

### § 37. Special funds.

#### Cross-Reference.

Liability of special funds to taxation, see "Taxation," § 139.

(a) An insurance company deposited with the state treasurer a fund as security for payment of policies, though not required to do so by law. The treasurer's receipt described the fund, and declared that it was held as a guaranty for the payment of policies, "in trust for the policy holders." *Held*, that the deposit created a trust fund for the payment of losses on policies, which could not be applied to the claims of general creditors until such special claims were satisfied.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated in 46 L. R. A. (N. S.) 187, on right of receiver to insurance funds deposited with state official; in 55 L. R. A. 50, on set-off in bankruptcy; in 19 L. R. A. (N. S.) 640, on right to return of premiums on adjudication of insurer.]

(b) The fact that the deposit in trust was made with the state treasurer, who, in his official capacity, had no power to accept it, does not defeat the trust, it being immaterial whether it was held in an individual or an official capacity.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated, see supra.]

(c) The deposit by an insurance company of a guaranty fund in trust for the benefit of its policy holders does not fall within the provisions of Code 1888, art. 16, § 205, requiring trustees to whom property is conveyed for the benefit of creditors, or to be sold for any purpose, to give bond.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; *American*

*Casualty Ins. Company's Case*, Id. (See Code 1911, art. 16, § 237; Id. [vol. 3], art. 16, § 237.) [Cited and annotated, see supra.]

### § 38. Profits, dividends, and surplus.

#### Cross-References.

Mutual companies, see post, § 59.

Reduction of premiums by profits or dividends, see post, § 185.

Liability of profits, undivided dividends and surplus to taxation, see "Taxation," § 139.

### § 39. Losses and assessments.

### § 40. Guaranty obligations.

#### Cross-References.

Funds and securities under statutes for protection of policy holders, see ante, §§ 8, 21.

Empowering insurance commissioner to institute suits in liquidation of insolvent or fraudulently conducted insurance company as deprivation of property without due process of law, see "Constitutional Law," § 305.

### § 41. Insolvency and dissolution.

### § 42.— Insolvency and its effect in general.

### § 43.— Rights of policy holders on insolvency.

(a) An insurance company, issuing a policy of employers' or carriers' indemnity in which the measure of the company's liability is the amount actually paid by the assured as damages for injuries or death, having become insolvent, is liable for losses incurred by the assured in accidents happening before such insolvency, but the amounts of which had not been ascertained or paid until after such insolvency, as well as for those incurred and paid by the assured before the insolvency.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 54 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated, see supra, § 37.]

(b) Under a policy insuring and indemnifying an individual against accidents, the company is liable, where the liability became fixed before insolvency, for the amount it would be obliged to pay had no insolvency intervened.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 54 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated, see supra, § 37.]

(c) The insolvency of an insurance company cancels all policies as to future losses.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 54 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated, see supra, § 37.]

(d) Since the insolvency of an insurance company is a breach of contract, the policy holders are entitled to recover the unearned premiums.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 54 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated, see supra, § 37.]

§§ 44-47.— (See Analysis.)

### § 48.— Grounds for forfeiture of franchise or dissolution.

(a) A corporation with only \$10,000 stock, which issues life insurance policies for over \$1,000 each, will have its charter forfeited for abuse and misuse of its powers; the only provision for insurance companies with less than \$100,000 capital invested in securities, and deposited with the state treasurer, being Code 1888, art. 23, §§ 127, 128, as amended by act 1892, c. 488, § 128, and act 1894, c. 256, § 128, permitting organizations issuing no policy of more than \$1,000 on one life to be formed on the mutual, co-operative, assessment, or stock plan, and, if on the latter, then requiring that they have a paid-up capital of at least \$10,000, and requiring every such company to deposit \$10,000 with the insurance commissioner.—*International Fraternal Alliance v. State*, 86 Md. 550, 39 Atl. 512, 40 L. R. A. 187. (See Code 1911, art. 23, §§ 192, 193; Id. [vol. 3], art. 23, §§ 192, 193; act 1916, c. 133, p. 216, amending § 193.)

### § 49.— Proceedings to enforce dissolution.

### § 50.— Assets and receivers.

#### Annotation.

Distribution of assets of insolvent insurance company.—38 L. R. A. 97, note.

(a) The premium reserve of a surety company placed in the hands of receivers, which fund was originally intended for the protection of policy holders from the time of the issuance of their policies, should be main-

tained pending the receivership proceedings for the protection of the company's liability upon bonds or policies issued with reference to which no default has occurred.—*United States v. Poe*, 120 Md. 89, 87 Atl. 933.

(b) Where it appeared, after a surety company had been placed in the hands of a receiver, that all of the losses or defaults already taken place upon its obligations, policies, etc., have probably not yet been liquidated, the creditors affected by such defaults should be protected by a reserve fund set aside for their benefit.—*United States v. Poe*, 120 Md. 89, 87 Atl. 933.

(c) Where a surety company which had deposited stock with the State Treasurer, as required by Code, art. 23, § 110, to secure its creditors, was placed in the hands of receivers while solvent, and the funds in the hands of the receivers might be sufficient for the payment of claims of policy holders, the court on petition of the receivers should not direct the Treasurer to deliver the stock to them.—*Vandiver v. Poe*, 119 Md. 348, 87 Atl. 410, 46 L. R. A. (N. S.) 187.

(d) Where an insurance company has created a special trust fund for the benefit of its policy holders, and has become insolvent, the trust fund is not liable for the payment of costs and expenses incurred in administering the general assets, but only for such as pertain to the administration of such fund.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated in 46 L. R. A. (N. S.) 187, on right of receiver to insurance funds deposited with state official; in 55 L. R. A. 50, on set-off in bankruptcy; in 19 L. R. A. (N. S.) 640, on right to return of premiums on adjudication of insurer.]

#### § 51.—Presentation and payment of claims.

(a) The adjuster of an insurance company employed on salary, but whose employment it not continuous, is not included in the classes named in Code 1888, art. 47, § 15, providing that the wages of clerks, servants, and employees of an insolvent corporation shall be a prior lien on the assets.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97;

*American Casualty Ins. Company's Case*, Id. (See Code 1911, art. 47, § 15.) [Cited and annotated, see supra, § 50.]

(b) Under Code, art. 47, § 15, providing that clerks, etc., are preferred creditors in the distribution of the property and estate of insolvent corporations, the wages of clerks of an insolvent insurance company are a prior lien only on the general assets, and not on a special trust fund created for the benefit of the policy holders.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. (See Code 1911, art. 47, § 15.) [Cited and annotated, see supra, § 50.]

(c) Where an insurance company has created a special trust fund for the benefit of its policy holders, they may, upon the insolvency of the company, participate in the general assets after the trust fund is extinguished.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated, see supra, § 50.]

#### (B) MUTUAL COMPANIES.

##### Cross-References.

Mutual benefit insurance associations, see post, §§ 687-710.

Property rights within constitutional inhibition against deprivation of property without due process of law, see "Constitutional Law," § 277.

#### §§ 52, 53. Incorporation, organization, and existence.

##### Cross-References.

Of mutual benefit insurance associations, see post, § 692.

Implied repeal of act by act on same subject, see "Statutes," § 161.

#### § 54. Constitutions and by-laws.

##### Cross-References.

Incorporation and construction as part of policy, see post, §§ 135, 152.

Of mutual benefit insurance associations, see post, § 693.

Validity of by-law authorizing cancellation, see post, § 228.

#### § 55. Members.

##### Cross-References.

Charter by-laws and rules as part of policy, see post, § 152.

Default in payment of assessments as ground of forfeiture of policy, see post, § 349.

Liability to assessment, see post, § 192.

Of mutual benefit insurance associations, see post, § 694.

Mandamus to compel disclosure of membership, see "Mandamus," § 129.

Married women as members, see "Husband and Wife," § 98.

Right of insurance company to maintain action for construction of obligation of members, see "Action," § 6.

#### Annotation.

Liability of members of mutual insurance company.—32 L. R. A. 481, note.

(a) One insuring in a mutual company becomes a member thereof.—*Mutual Fire Ins. Co. v. Miller Lodge, I. O. O. F.*, 58 Md. 463. [Cited and annotated in 20 L. R. A. (N. S.) 1039, on effect of custom of giving insured notice of maturity of premium; in 23 L. R. A. (N. S.) 307, on debt from insurer to insured sufficient to pay premium or assessment as preventing forfeiture.]

(b) When a person takes out a policy in a mutual insurance company, and the contract is complete, he is bound by the rules of the charter and by-laws of the company; being presumed to have knowledge of them all.—*Mutual Fire Ins. Co. v. Miller Lodge, I. O. O. F.*, 58 Md. 463. [Cited and annotated, see supra.]

(c) Resolutions passed by the board of directors of a mutual insurance company, do not affect a policy holder having no notice of their passage.—*Martin v. Mutual Fire Ins. Co.*, 45 Md. 51.

#### § 56. Officers.

##### Cross-References.

Of mutual benefit insurance associations, see post, § 695.

Power and duty to make assessments, see post, § 191.

Wrongful act of officer as agent for another, see "Principal and Agent," § 157.

#### § 57. Franchises and powers.

##### Cross-References.

Estoppel to plead ultra vires, see post, § 141.

Execution of bond as condition precedent to doing business, see ante, § 8.

Of mutual benefit insurance associations, see post, § 696.

Power to reinsure, see post, § 676.

Estoppel to deny corporate powers, see "Corporations," § 388.

(a) As act 1842, c. 214, chartering a mutual fire insurance company, gives it "full power and authority to make insurance on any kind of property against loss by fire," such com-

pany has the right to insure personal property, and is not confined to real property only, though the second section of the original act of corporation makes the premium notes liens upon real estate only, and various supplemental acts authorize guardians to insure any house or building owned by the ward, tenants for life to insure their interest, and married women to insure their real estate; such supplemental acts providing also that in such cases the premium shall be a lien on the various interests insured.—*Allen v. Hartford Mut. Fire Ins. Co.*, 2 Md. 111. [Cited and annotated in 52 L. R. A. 333, 335, on when insurable interest must exist under fire policies.]

#### § 58. Special funds.

##### Cross-References.

Funds and securities under statutes for protection of policy holders, see ante, §§ 8, 21.

Of mutual benefit insurance associations, see post, § 698.

Liability of special funds to taxation, see "Taxation," § 139.

Police insurance funds, see "Municipal Corporations," § 107.

#### § 59. Profits, dividends, and surplus.

##### Cross-References.

Reduction of premiums by profits or dividends, see post, § 185.

Stock companies, see ante, § 38.

Liability of profits, undivided dividends and surplus to taxation, see "Taxation," § 139.

#### § 60. Guaranty obligations.

##### Cross-Reference.

Securities provided by company under statutes for protection of policy holders, see ante, §§ 8, 21.

#### §§ 61-72. Insolvency and dissolution.

##### Cross-References.

Computation of period of limitations affecting liability of members, see "Limitation of Actions," § 65.

Conclusiveness of foreign judgment, see "Judgment," § 822.

Direction of verdict for receiver as denial of right to jury trial, see "Jury," § 34.

Existence of trust as affecting limitations, see "Limitation of Actions," § 102.

Jurisdiction of action by receiver to declare lien on property for assessment dependent on amount or value in controversy, see "Courts," § 120.

(a) The Circuit Court has jurisdiction over a suit brought under and in compliance with Code 1888, art. 23, § 122, subs. 7, as re-enacted by act 1902, p. 453, c. 338, empowering the Insurance Commissioner to institute suits

for violations of the insurance laws, and for the liquidation of the affairs of insolvent or fraudulently conducted companies.—*Monumental Mut. Life Ins. Co. v. Wilkinson*, 100 Md. 31, 59 Atl. 125. (See Code 1911, art. 23, § 178; Id. [vol. 3], art. 23, § 178; act 1916, c. 521, p. 1085, §§ 178A, 178B, 178C.)

(b) Where the attorney for an insurance company informed the court, after the argument and decision in another case, that no further objection would be made in the case at bar to the appointment of a commission and of a receiver under Code 1888, art. 23, § 122, subs. 7, as re-enacted by act 1902, p. 453, c. 338, providing for proceedings for the liquidation of insolvent or fraudulently conducted insurance companies, and the appointment of a commission and receiver, and further asked for and received representation in the receivership, and agreed with opposing counsel upon the persons who were appointed receivers, the insurance company was bound by the order appointing the receivers, and could not be heard to contest its validity on appeal.—*Monumental Mut. Life Ins. Co. v. Wilkinson*, 100 Md. 31, 59 Atl. 125. (See Code 1911, art. 23, § 178; Id. [vol. 3], art. 23, § 178; act 1916, c. 521, p. 1085, §§ 178A, 178B, 178C.)

(c) A mutual live-stock insurance company became insolvent, and a receiver was appointed in the state creating it. A Maryland member, who had suffered a loss, filed a bill in Maryland for the appointment of a receiver to take charge of the assets and collect the debts due the company in Maryland, and apply the same in payment of the claims of Maryland creditors. The only assets in Maryland were debts due from citizens of the state. Plaintiff's claim was payable from assessments by the company on its policy holders, in accordance with the by-laws. The bill not only failed to show that an assessment had not been made, but also omitted to state how a Maryland receiver could exercise the powers of the company in making and collecting assessments. The by-laws of the company provided that losses are to be paid by assessments on the members "in exact proportion to the losses sustained." The company alone can ascertain such losses. The policy provided that the contract is a contract of the state of the insurer, and that

suit thereon shall be brought in a named city in such state, and the bill does not show that the courts thus selected are not able and willing to afford full relief. *Held*, that a receiver should not be appointed.—*Stockley v. Thomas*, 89 Md. 663, 43 Atl. 766.

(d) Where, on the dissolution of an insurance company, the receiver reported the total indebtedness of the company, all the premium notes held by it, the losses and expenses, and the percentage of assessments each class of notes was liable for, and the court decreed an assessment, to be made on each class in a specific amount, *held*, in a suit to recover the assessment, that the policy holder was bound by this decree.—*Lycoming Fire Ins. Co. v. Langley*, 62 Md. 196. [Cited and annotated in 24 L. R. A. 301, on restrictions on business of foreign insurance companies; in 32 L. R. A. 504, on liability of members of mutual fire insurance companies; in 34 L. R. A. 738, on right to enforce stockholder's liability outside of state of incorporation; in 16 L. R. A. (N. S.) 1204, on parol-evidence rule as to varying or contradicting written contracts, as affected by doctrine of waiver or estoppel of insurer; in 41 L. R. A. (N. S.) 1140, on right to reject or rescind policy not conforming to representations of insurer's agent.]

### III. INSURANCE AGENTS AND BROKERS.

#### (A) AGENCY FOR INSURER.

##### *Cross-References.*

Agents of mutual benefit insurance associations, see post, § 695.

Estoppel of insurer by acts, conduct, or statements of agent, see post, §§ 373-400, 556.

Extension by agent or broker of time for payment of premium or assessment, see post, § 358.

Fraudulent or collusive acts of agent ground of estoppel or waiver, see post, § 380.

Insertion by agent of false answers in application, see post, § 379.

Knowledge of or notice to agents as element of estoppel or waiver affecting right of insurer to avoid or forfeit policy, see post, § 378.

Offenses by agents or brokers, see ante, § 30.

Payment or tender to agent or broker of premium or assessment to prevent forfeiture, see post, § 361.

Rebates from premiums, see post, § 184.

Regulation of agents and brokers, see ante, §§ 12, 22.

Requirement of appointment of local agents by foreign insurance companies, see ante, § 22.

Waiver by agent, see post, §§ 375, 376, 556.

Authority of agent to extend premium

note, see "Principal and Agent," § 109.  
 Authority of cashier of state insurance agent to indorse drafts, see "Principal and Agent," § 109.

Burden to show ratification of acts of insurance patrol, see "Principal and Agent," § 190.

Conformity of findings of court to pleadings, in action by insured against agent, see "Trial," § 396.

Construction of agreement to arbitrate, see "Arbitration and Award," § 7.

Construction of statutes, see "Statutes," § 231.

Contract of agent guarantying solvency of company and return of unearned premiums as within statute of frauds, see "Frauds, Statute of," § 23.

Divisibility of contract by agent transferring business, see "Contracts," § 171.

Liability of agent for failure to insure, see "Principal and Agent," § 62.

Libelous and slanderous imputations concerning insurance agents, see "Libel and Slander," § 10.

Oral agreement between agent and insurance company collateral to written contract, see "Contracts," § 165.

Procuring money by falsely personating insurance agent, see "False Pretenses," § 35.

Recovery by discharged general agent for breach of contract to retain subagents and renew insurance, see "Contracts," § 321.

Relation of master and servant between insurance company and physician employed by it, see "Master and Servant," § 301.

Right of insurance company to offset indebtedness of agent against claims for commissions as affected by notice of assignment of claims, see "Assignments," § 101.

Separate statement of conclusions of law and fact in action to recover premiums collected by agent, see "Trial," § 394.

Set-off in action against agent to recover premiums collected, see "Set-Off and Counterclaim," § 28.

Wrongful act of officer who was agent for another, see "Principal and Agent," § 157.

### § 73. The relation in general.

#### Cross-References.

Agency for both parties, see post, §§ 98, 99.

Creation of agency for insured, see post, § 96.

### § 74. Appointment or employment of agent.

#### Cross-References.

Authority of general agents to appoint sub-agents, see post, § 88.

Contract with agent as void for uncertainty, see "Contracts," § 9.

### § 75. Implied agency.

### § 76. Evidence as to agency.

(a) In the absence of direct proof of a broker's actual authority to act for the insurer, the insured may establish his agency by showing that the act relied on was within the scope of his apparent authority, notwithstanding the policy provides that no person shall be deemed the agent of the insurer unless duly authorized in writing.—*American Fire Ins. Co. v. Brooks*, 83 Md. 22, 34 Atl. 373. [Cited and annotated in 50 L. R. A. (N. S.) 38, on sufficiency of notice of cancellation of fire policy; in 38 L. R. A. (N. S.) 617, 625, on insurance broker as agent for the insured; in 39 L. R. A. (N. S.) 830, on time from which notice of cancellation of fire insurance becomes effective.]

### § 77. Estoppel to deny agency.

### § 78. Scope and extent of agency.

#### Cross-Reference.

Authority of agent to renew, see post, § 145.

### § 79. Duration and termination of agency.

#### Annotation.

Termination of agency as affecting insurance agent's right to commissions on renewals.—35 L. R. A. (N. S.) 153, note.

### § 80. Authority and duties of agent as to insurer.

#### Cross-Reference.

Authority of agent to execute note, see "Principal and Agent," § 109.

### §§ 81, 82. (See Analysis.)

### § 83. Liabilities of agents and their sureties.

#### Annotation.

Liability of insurance broker as agent for insured.—38 L. R. A. (N. S.) 631, note.

Liability of insurance agent to company for failure to follow instructions.—22 L. R. A. (N. S.) 509, note.

Liability of agent where statutes regulating business of foreign insurance companies have not been complied with.—20 L. R. A. 407, note.

### § 84. Compensation of agent.

#### Cross-References.

Right to compensation as dependent on payment of license fee, see ante, § 12.

Effect of custom, see "Customs and Usages," §§ 7, 14, 17.

#### Annotation.

Termination of agency as affecting insurance agent's right to commissions on renewals.—35 L. R. A. (N. S.) 153, note.

Applicability of statute against rebates and discrimination to allowance by agent to insured of part of former's commissions.—23 L. R. A. (N. S.) 722, note.

Assignability of insurance agent's right to commissions on renewal premiums.—18 L. R. A. (N. S.) 193, note.

(a) Where a written contract between an insurance company and an agent, after providing for the commissions he should receive on new business, provided for a termination of the contract by either party, and recited that it abrogated all prior relations between the parties, and that on its forfeiture all rights of the agent to collect any premiums should cease, but it was subsequently provided that the company would pay the agent a renewal commission on premiums personally secured by him prior to the date of the contract, after the termination of the contract the agent was not entitled to commissions on renewals.—*Scott v. Travelers' Ins. Co.*, 103 Md. 69, 63 Atl. 377. [Cited and annotated in 35 L. R. A. (N. S.) 155, on termination of insurance agency as affecting right to commissions on renewals.]

(b) In an action for commissions by an insurance agent, a charge authorizing a finding for defendant, although plaintiff introduced the insured, if the application which was finally accepted was secured at a time when plaintiff was out of defendant's service, and engaged in another city in a different line of business, was too broad, in failing to submit the question as to when plaintiff went out of defendant's service, and ignoring the question raised by the evidence as to whether defendant agreed to protect the insurance which plaintiff had undertaken.—*Leviness v. Kaplan*, 99 Md. 683, 59 Atl. 127.

(c) Where there was a general custom among insurance companies, including that for which plaintiff was soliciting, to allow the agent who procured a new application, instead of the agent who procured an original postponed application, the commissions therefor, plaintiff, who procured the original application, which was postponed, was not entitled, in the absence of a special agreement, to receive commissions based on a policy issued on the new application, obtained by another agent.—*Leviness v. Kaplan*, 99 Md. 683, 59 Atl. 127.

(d) Where an application for an insurance policy procured by plaintiff, as agent, failed by being postponed, and a year afterwards a new application, for double the amount of the application procured by plaintiff, was obtained by another agent, plaintiff, if entitled to recover commissions at all, could only recover commissions on the amount of the original application.—*Leviness v. Kaplan*, 99 Md. 683, 59 Atl. 127.

(e) Although the work of an insurance agent in getting the original application of insured, which was postponed by the company's medical examiner, was, in a sense, the procuring cause which induced insured to apply again, the agent was not entitled to commissions where prior to the second application he abandoned his employment, and the second application was obtained by another agent.—*Leviness v. Kaplan*, 99 Md. 683, 59 Atl. 127.

### § 85. Breach of contract by principal.

#### Cross-Reference.

Right of agent of company illegally indemnifying against credit losses to enforce contract with company, see "Contracts," § 122.

### §§ 86-92. Extent and exercise of powers of agents.

#### Cross-References.

Acceptance of note in payment of premium, see post, § 137.

Payment of premium to agent, see post, § 186.

Power of agent to modify contracts, see post, § 144.

Powers of adjusters, see post, § 565.

Powers of agents as estoppel and waiver as to notice and proofs of loss, see post, § 556.

Powers of agents as to binding slips or memoranda, see post, § 132.

Powers of agents as to contracts in general, see post, § 129.

Powers of agents as to contracts of reinsurance, see post, § 676.

Power of agent to appoint agent to adjust losses, see post, § 564.

Power to deliver policy, see post, § 136.

Power to extend time for payment of premiums, see post, § 358.

Power to make executory agreement to insure, see post, § 128.

Power to make parol contract of insurance, see post, § 131.

To renew policies, see post, § 145.

Waiver of conditions, see post, § 141.

(a) Where an insurance company takes a risk on a sulphuric acid manufactory and the chemical apparatus connected therewith,



after a complete inspection of the same by its own experts, it cannot set up as a defense to an action on the policy the ignorance or incapacity of such inspectors.—*Washington Fire Ins. Co. v. Davison*, 30 Md. 91. [Cited and annotated in 26 L. R. A. 239, on location of movable property as affecting fire insurance; in 41 L. R. A. (N. S.) 864, 865, 905, on admissibility of previous statements by witness out of court consistent with his testimony.]

### § 93. Unauthorized and wrongful acts of agent.

(a) An insurance company is liable for the fraud of an agent in collecting a premium not due from an insured where the agent was acting within his actual or apparent authority, although the company did not authorize or participate in the agent's conduct.—*New England Mut. Life Ins. Co. v. Swain*, 100 Md. 558, 60 Atl. 469.

(b) In an action against an insurance company for damages arising from the fraud of an agent in collecting from plaintiff a premium not due, *held*, that it was a question for the jury, under the evidence, as to whether the agent, in collecting the premium, was acting within the scope of his authority, actual or apparent.—*New England Mut. Life Ins. Co. v. Swain*, 100 Md. 558, 60 Atl. 469.

(c) In an action against an insurance company for damages arising from the fraud of an agent for collecting a premium not due, the court instructed that if the agent in question was a duly authorized agent to solicit insurance, and after having collected the premium he falsely and fraudulently represented that another premium was due, when in fact the second premium was not due, etc., the verdict must be for plaintiff. *Held*, that the instruction was erroneous, in that it did not require the jury to determine whether the agent was acting within the scope of his employment in collecting the second premium.—*New England Mut. Life Ins. Co. v. Swain*, 100 Md. 558, 60 Atl. 469.

(d) In an action against a life insurance company for damages for the fraud of an agent who wrote plaintiff a policy, and, after collecting the first premium, by fraudulent representations collected a second, not due, it was proper to admit evidence as to the

agent's commission on a first premium to show his interest in issuing the policy; the evidence being such that it might have led up to a tracing of both premiums to defendant.—*New England Mut. Life Ins. Co. v. Swain*, 100 Md. 558, 60 Atl. 469.

### § 94. Ratification.

#### Cross-References.

Of consent to assignment of policy, see post, § 207.

Of defective or invalid contract of insurance, see post, § 142.

### § 95. Notice to agent.

#### Cross-Reference.

Element of estoppel or waiver affecting right of insurer to avoid or forfeit policy, see post, § 378.

### (B) AGENCY FOR APPLICANT OR INSURED.

#### Cross-Reference.

Liability of agent for failure to insure, see "Principal and Agent," § 62.

### § 96. Creation of agency to procure insurance in general.

#### Annotation.

Insurance broker as agent for insured.—38 L. R. A. (N. S.) 614, note.

Is medical examiner agent of insurer or of insured.—41 L. R. A. (N. S.) 506, note.

When insurance agent is agent of assured.—20 L. R. A. 279, note.

### §§ 97-99. Creation of agency for both parties.

(a) A broker through whom insurance is procured, though at his solicitation, is the agent of the insured, and his acts will not bind the insurer.—*American Fire Ins. Co. v. Brooks*, 83 Md. 22, 34 Atl. 373. [Cited and annotated in 50 L. R. A. (N. S.) 38, on sufficiency of notice of cancellation of fire policy; in 38 L. R. A. (N. S.) 617, 625, on insurance broker as agent for the insured; in 39 L. R. A. (N. S.) 830, on time from which notice of cancellation of fire insurance becomes effective.]

### § 100. Evidence as to agency.

### § 101. Scope and extent of agency.

(a) A broker whose employment extends only to the procurement of the policy ceases to be the agent of the insured on the execution and delivery of such policy.—*American Fire Ins. Co. v. Brooks*, 83 Md. 22, 34 Atl. 373. [Cited and annotated, see supra, §§ 97-99.]

### §§ 102-111. (See Analysis.)

### § 112. Ratification.

(a) The party who avails himself of the benefit of a policy "for whom it may concern" is bound by the acts and representations of the parties procuring it.—*Augusta Ins. & Banking Co. v. Abbott*, 12 Md. 348. [Cited and annotated in 47 L. R. A. (N. S.) 197, on right to insurance taken out by carrier; in 13 L. R. A. (N. S.) 152, on right to insurance taken in agent's name.]

### § 113. Notice to agent.

## IV. INSURABLE INTEREST.

### Cross-References.

Change of interest, after insurance, see post, § 328.

Extent of liability of insurer, see post, § 503.

Mutual benefit insurance, see post, § 767. Pleading title or interest, see post, §§ 630, 633.

Proof of title or interest, see post, § 653.

Representation of warranty as to interest, see post, §§ 282, 298.

Right to proceeds of policy, see post, §§ 580-594.

Authority of school trustees to insure school property, see "Schools and School Districts," § 79.

Capacity to take proceeds of policy by bequest, see "Wills," § 10.

Effect of statutes giving railroad companies insurable interest in property along right of way on liability for damage by fire, see "Railroads," § 468.

Immunity of assignee for creditors to insure assigned property, see "Assignments for Benefit of Creditors," § 411.

Power of city to insure public buildings, see "Municipal Corporations," § 716.

Right of trustee in bankruptcy in policy on life of bankrupt, see "Bankruptcy," § 143.

Rights and liabilities of life tenant as to insurance of property, see "Life Estates," § 19.

Right to maintain trover for wrongful conversion of policy, see "Trover and Conversion," § 16.

### § 114. Necessity in general.

#### Annotation.

Consent of person whose life is insured, as a condition of insurance thereon.—56 L. R. A. 586, note.

Time when insurable interest must exist under fire policies.—52 L. R. A. 330, note.

(a) When it is said that a marine or fire insurance contract is a contract of indemnity, the meaning is that in order to support it there must be an insurable interest, and no action upon the policy can be main-

tained until a loss has occurred.—*Whiting v. Independent Mut. Ins. Co.*, 15 Md. 297. [Cited and annotated in 23 L. R. A. 121, on payment by volunteer or stranger.]

### § 115. What constitutes interest in property.

#### Cross-References.

Carriers as insurer of goods shipped, see "Carriers," § 108.

Duty of warehousemen to insure goods stored, see "Warehousemen," § 22.

Insurance by factor of goods consigned to him for sale, see "Factors," § 16.

Insurance of demised premises, liability as between landlord and tenant, see "Landlord and Tenant," § 156.

Insurance of mortgaged premises, rights, and liability of parties, see "Mortgages," § 201.

Interest of married woman in policy as her separate property, see "Husband and Wife," § 140.

Usages in general, see "Customs and Usages," § 15.

#### Annotation.

Insurable interest of tenant in leased property.—42 L. R. A. (N. S.) 135, note.

Insurable interest of husband in wife's property, or that in which she has an interest.—66 L. R. A. 657; 45 L. R. A. (N. S.) 1132, notes.

(a) A towing company which is liable to the owner of a cargo for its loss has an insurable interest therein.—*Western Assur. Co. v. Chesapeake Lighterage Co.*, 105 Md. 232, 65 Atl. 637.

(b) Attorneys of a mortgagee have, as such, an insurable interest in the property, where it has been sold under foreclosure of the mortgage, but part of the purchase price has not been paid, and they have obtained an order of court for a resale at risk of the purchaser.—*Hartford Fire Ins. Co. v. Keating*, 86 Md. 130, 38 Atl. 29, 63 Am. St. Rep. 499. [Cited and annotated in 13 L. R. A. (N. S.) 844, 866, on effect of nonwaiver agreement on conditions existing at inception of policy.]

(c) A carrier may insure property in its hands for transportation in its own name for the benefit of whom it may concern.—*Fire Ins. Ass'n v. Merchants & Miners Transp. Co.*, 66 Md. 339, 7 Atl. 905, 59 Am. Rep. 162. [Cited and annotated in 52 L. R. A. 331, 342, on when insurable interest must exist under fire policies; in 13 L. R. A. (N. S.) 154, on right to insurance taken in agent's name.]

(d) The prima facie presumption of seisin in fee arising out of the possession and occupation of real property by one who claims to be the owner thereof is sufficient, in the absence of proof of an outstanding title in others, or of any incumbrance on the property, to show an insurable interest therein.—*Franklin Fire Ins. Co. v. Chicago Ice Co.*, 36 Md. 102, 11 Am. Rep. 469. [Cited and annotated in 44 L. R. A. (N. S.) 149, 151, on provision that working of mechanics shall avoid insurance.]

(e) A person in possession of property, claiming and occupying is as owner, has prima facie an insurable interest therein.—*Franklin Fire Ins. Co. v. Chicago Ice Co.*, 36 Md. 102, 11 Am. Rep. 469. [Cited and annotated, see supra.]

(f) A person having goods in his possession as consignee or on commission may insure them in his own name, and, in the event of loss, recover the full amount of the insurance, and, after satisfying his own claim, hold the balance as trustee for the owner.—*Hough v. People's Fire Ins. Co.*, 36 Md. 398.

(g) A mortgagor in possession and before foreclosure has an insurable interest in the property.—*Washington Fire Ins. Co. v. Kelly*, 32 Md. 421, 3 Am. Rep. 149. [Cited and annotated in 52 L. R. A. 333, 335, on when insurable interest must exist under fire policies.]

(h) The interest of a husband in property conveyed to his wife under act 1842, but not to her sole and separate use, is insurable in a mutual insurance company, whose charter gives "full power and authority to make insurance on any kind of property."—*Mutual Fire Ins. Co. v. Deale*, 18 Md. 26, 79 Am. Dec. 673. [Cited and annotated in 66 L. R. A. 659, 661, on husband's insurable interest in wife's property; in 69 L. R. A. 375, on effect of conveyance by husband to wife.]

(i) The interest of the husband in land conveyed to his wife under act 1842, c. 293, § 1, is insurable—*Mutual Fire Ins. Co. v. Deale*, 18 Md. 26, 79 Am. Dec. 673. [Cited and annotated, see supra.]

(j) If advances be made by the charterer on freight simply on the personal credit of the owner, who is bound to repay the same as a debt, independent of the issue of the voyage, the charterer has no insurable interest in the amount so advanced as freight.—*Lee v. Barreda*, 16 Md. 190.

(k) The terms of a charter party, by which the charterer has the right to retain the amount advanced out of the freight, gives him a lien on the freight, which he may insure, notwithstanding that he has the right to reclaim the amount upon the failure of the voyage.—*Lee v. Barreda*, 16 Md. 190.

(l) The lien upon buildings held by material men under the mechanics' lien laws of Maryland is an insurable interest in the property.—*Franklin Fire Ins. Co. v. Coates*, 14 Md. 285. [Cited and annotated in 43 L. R. A. 664, on insurable interest in unfinished building under construction by contractor; in 52 L. R. A. 333, 335, on when insurable interest must exist under fire policies.]

(m) A party having a mortgage or other lien on real property may insure the property to secure his claim.—*Allen v. Mutual Fire Ins. Co.*, 2 Md. 111. [Cited and annotated in 52 L. R. A. 333, 335, on when insurable interest must exist under fire policies.]

## § 116. What constitutes interest in human life or health.

### Cross-Reference.

Duty of contractor under contract to maintain accident insurance, see "Contracts," § 198.

### Annotation.

Insurance on life in favor of paramour.—47 L. R. A. (N. S.) 252, note.

Insurable interest in life of parent or child or other relative by blood.—54 L. R. A. 225; 45 L. R. A. (N. S.) 982, notes.

Insurable interest in life of foster child or foster parent.—46 L. R. A. (N. S.) 779, note.

Insurable interest of adult child in life of parent.—19 L. R. A. (N. S.) 233, note.

Insurance on life of officer of corporation for benefit of the corporation.—16 L. R. A. (N. S.) 1020, note.

Application to interest in lives of brothers or sisters.—54 L. R. A. 231, note.

Wife's right to insure life of husband.—53 L. R. A. 817, note.

Right to insure life of betrothed husband.—53 L. R. A. 825, note.

Validity of life insurance for benefit of betrothed wife.—19 L. R. A. 187, note.

Insurable interest of single woman in life of intended husband.—2 L. R. A. 844, note.

(a) Life insurance in a company operating on the mutual or co-operative plan may be made payable to one with whom insured lived illicitly on separation from his wife, though the beneficiary be designated as "wife," as well as by name, and the lawful

wife survives insured.—*Meinhardt v. Meinhardt*, 117 Md. 426, 83 Atl. 715. [Cited and annotated in 47 L. R. A. (N. S.) 256, on insurance on life in favor of paramour.]

### § 117. Estoppel to deny interest.

### §§ 118-120. Insurance without interest.

#### Annotation.

Right to take life insurance for benefit of stranger.—25 L. R. A. 627, note.

(a) An insurance against fire, without interest in the property insured, is a wagering contract; and the insured must have an interest in the property not only at the time of the insurance, but when a loss occurs.—*Bennett v. Mutual Fire Ins. Co.*, 100 Md. 337, 60 Atl. 99.

### § 121. Necessity of interest to sustain assignment.

#### Cross-Reference.

Right to assign in general, see post, §§ 199-225.

#### Annotation.

Validity of assignment of life insurance policy to one having no insurable interest where the assignment is not made by way of cover for a wager policy.—6 L. R. A. (N. S.) 128, note.

(a) An assignment of a valid life policy is legal whether the assignee has an insurable interest in the life of insured or not.—*Fitzgerald v. Rawlings Implement Co.*, 114 Md. 470, 79 Atl. 915; *Same v. Rawlings*, Id.

### § 122. Assignment of policy to person without interest.

#### Annotation.

Validity of assignment by beneficiary having no insurable interest to one paying premiums.—3 L. R. A. (N. S.) 952, note.

### § 123. Extinguishment of interest.

(a) The assignment of a certificate in a benevolent association is not a wager transaction, the assignor being indebted to the assignee, though the debt was cancelled by the assignment, and thereafter the latter had no insurable interest in the former's life.—*Clogg v. MacDaniel*, 89 Md. 416, 43 Atl. 795. [Cited and annotated in 3 L. R. A. (N. S.) 937, on validity of assignment of interest in life insurance to one paying premiums.]

## V. THE CONTRACT IN GENERAL.

### Cross-References.

Mutual benefit insurance, see post, §§ 711-730.

Pleading policy and accompanying documents, see post, § 631.

Policy or other contract as evidence, see post, § 651.

Reinsurance, see post, §§ 678, 679.

Best and secondary evidence, see "Criminal Law," § 400.

Contract as constituting the doing of business by foreign corporation, see "Corporations," § 642.

Contract for payment of annuities, see "Annuities."

Interest under insurance contract as subject to attachment, see "Attachment," § 57.

Parol or extrinsic evidence to contradict or vary contract, see "Evidence," §§ 405, 411, 413, 414, 417, 418, 419, 424, 427, 433.

### (A) NATURE, REQUISITES, AND VALIDITY.

#### Cross-References.

Effect of misrepresentation, fraud, or breach of warranty, covenant, or condition, see post, §§ 250-311, 371-401.

Actionable deceit in contract of insurance, see "Fraud," § 13.

Contract of indemnity as contract of insurance, see "Indemnity," § 6.

Decisions of state courts as authority in federal courts, see "Courts," § 366.

Parol or extrinsic evidence of fraud in contract, see "Evidence," § 434.

Part performance of contract to insure as taking contract out of statute of frauds, see "Frauds, Statute of," § 129.

Remedy of insurance company in case of fraud, see "Fraud," § 31.

Separate or subsequent oral agreement affecting contract, see "Evidence," §§ 439-445.

Specific performance of contracts of insurance, see "Specific Performance," § 78.

Stamp tax on policy, see "Internal Revenue," § 19.

Statute providing for preparation of "standard policy" by insurance commissioner as delegation of legislative power, see "Constitutional Law," § 60.

Statute providing that no life insurance company shall make any distinction or discrimination in rates in favor of individuals as being in restraint of trade, see "Constitutional Law," § 89.

Statutes regulating contract as infringing liberty of contract, see "Constitutional Law," § 89.

Stipulations in contract as to insurance as constituting usury, see "Usury," § 59.

Validity of contract, with minor, see "Infants," § 47.

Validity of policy on saloon fixtures as affected by failure to obtain license, see "Intoxicating Liquors," § 327.

### § 124. Nature of the contract.

(a) A bond of a subcontractor to construct the reinforced concrete work of a building, conditioned on the subcontractor conforming to the contract, and stipulating that the bond is executed by the surety and received by the contractor on conditions stated, is a contract of insurance.—*Ætna Indemnity Co. v. George A. Fuller Co.*, 111 Md. 321, 73 Atl. 738, 74 Atl. 369.

(b) An insurance policy is a contract of indemnity, and cannot be made the subject of profit by insured.—*Palatine Ins. Co. v. O'Brien*, 107 Md. 341, 68 Atl. 484. [Cited and annotated in 47 L. R. A. (N. S.) 291, 296, on what constitutes insurance; in 23 L. R. A. (N. S.) 123, 124, on rent insurance.]

(c) The discharge under the insolvent laws of one who is insured in a mutual insurance company releases him from all liability upon his premium note, and thereby destroys the mutuality of the contract of insurance. The company, therefore, is no longer bound by it.—*Reynolds v. Mutual Fire Ins. Co.*, 34 Md. 280, 6 Am. Rep. 337. [Cited and annotated in 15 L. R. A. (N. S.) 830, on effect of bankruptcy or insolvency proceedings, or assignment for creditors, on fire insurance.]

(d) A contract of marine or fire insurance is a contract of indemnity only.—*Whiting v. Independent Mutual Ins. Co.*, 15 Md. 297.

### § 125. What law governs.

#### Cross-References.

Mutual benefit insurance, see post, § 712.  
What law governs construction of contract, see post, § 147.

What law governs validity of assignment, see post, § 200.

(a) Under act 1894, p. 1059, c. 662 (Code 1904, art. 23, § 196), providing that no untrue statement in warranties in an application for a life insurance policy shall effect a forfeiture unless such statements were material to the risk, while the common law is presumed to be in force in all of the original states and to be the same as the common law of the forum, a stipulation in a policy that it is subject to the laws of New York is against public policy, and will not be allowed to avoid the salutary provisions of the statute, and it is immaterial that the company is a mutual insurance company.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457,

69 Atl. 385. (See Code 1911, art. 23, § 213.) [Cited and annotated in 23 L. R. A. (N. S.) 973, 981, on conflict of laws as to insurance contracts.]

(b) Where an insurance policy was delivered to insured in Maryland, and insured was a citizen of the state, and the first premium was paid there, the policy was a Maryland contract, to be governed by the laws of Maryland.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. [Cited and annotated, see supra.]

### § 126. Subjects of insurance.

#### Cross-Reference.

Construction of policy as to subject-matter insured, see post, §§ 157, 159, 160, 162-166, 168.

### § 127. Existence and condition of subject-matter.

#### Cross-References.

Effect of falling of building, see post, § 324.

Statutory limitation as to age of person insured, see ante, § 11.

### § 128. Executory agreements to insure.

#### Cross-References.

Agreements to renew, see post, § 145.

Construction of agreements, see post, § 148.

Agreements to procure insurance of mortgaged premises, see "Mortgages," § 201.  
Authority of agent, see "Principal and Agent," § 101.

Failure to procure as breach of charter party, see "Shipping," § 52.

### § 129. Powers of agents in respect of contracts in general.

#### Cross-References.

Powers of agents in general, see ante, §§ 87-98.

Powers of officers or agents respecting waiver, see post, §§ 375, 376.

(a) An insurance agent supplied with policies in blank, and authorized to issue them, and who signs and delivers them to parties desiring insurance, receiving the premiums and accounting for them to the company, is a general agent within his territory in the matter of soliciting and accepting risks and agreeing on the terms of the contract.—*Hartford Fire Ins. Co. v. Keating*, 86 Md. 130, 38 Atl. 29, 63 Am. St. Rep. 499. [Cited and annotated in 13 L. R. A. (N. S.) 844, 866, on effect of nonwaiver agreement on conditions existing at inception of policy.]

### § 130. Application or offer and acceptance.

#### Cross-References.

Application as evidence, see post, § 650.  
 Application or other accompanying papers as part of policy, see post, § 151.  
 Commencement of risk, see post, § 175.  
 Insertion by agent of false answers in application, see post, § 379.  
 Membership in mutual benefit insurance association, see post, § 713.

#### Annotation.

Effect of delay in passing upon application.—36 L. R. A. (N. S.) 1211, note.

(a) An application for fire insurance was made to a mutual company August 7th, the application being subject to the approval of the directors, and was delivered to one of the directors, August 9th. On the 19th of August the directors had a meeting for the transactions of special business, and no action was at that time taken on the application. August 30th the house was burned. September 25th, at the first regular meeting of the executive committee, the application was rejected, and the committee's action was approved by the directors. *Held*, that there was no such negligence on the part of the company as would entitle the plaintiff to recover.—*Harp v. Grangers' Mut. Fire Ins. Co.*, 49 Md. 307. [Cited and annotated in 36 L. R. A. (N. S.) 1211, on insurance: effect of delay in passing upon application.]

### § 131. Validity of oral contracts.

#### Cross-References.

Oral contracts of renewal, see post, § 145.  
 Validity of oral assignment, see post, § 208.  
 Application of statute of frauds, see "Frauds, Statute of," §§ 22, 49, 51.

#### Annotation.

Validity of oral contract of insurance.—22 L. R. A. 768, note.

### § 132. Binding slips or memoranda.

(a) A slip issued by a mutual fire insurance company's agent *held* to constitute a contract of insurance which the company could not vary by issuing a policy containing a clause prohibiting other insurance.—*Mutual Fire Ins. Co. v. Goldstein*, 119 Md. 83, 86 Atl. 35.

(b) Plaintiff wishing to obtain insurance on his interest in the bark P., his agents, L. C. & Co., employed F., an insurance broker, who obtained from W., agent of the company, this paper, dated June 20, 1878: "No.

1,002. \$1,200. D. S. F. & M. Ins. Co., Wilmington, Del. This certifies that we have this day entered in the name of L. C. & Co., for whom it may concern, on our open policy No. 1,002, with [said company] a risk of \$1,200 on bark P., at and from June 20, 1878, to June 20, 1879, loss, if any, payable in current funds to Messrs. L. C. & Co., or order, according to the terms and conditions of the policy. [Signed] J. S. W., Agent." The paper was delivered by the broker to L. C. & Co., and by them assigned in writing to plaintiff. No policy was ever prepared or issued by the company. *Held*, in suit for a loss on the vessel, that the paper did not constitute a valid and binding contract of insurance, nor could an action be maintained on it as such.—*Delaware State Fire & Marine Ins. Co. v. Shaw*, 54 Md. 546.

### § 133. Form and requisites of policy.

#### Cross-References.

Construction of standard policy, see post, § 146.  
 Effect of adoption of standard policy, see ante, § 4.  
 Execution of fidelity bond by employee, see ante, § 75.  
 Form and requisites of assignment, see post, § 209.  
 Renewal policies, see post, § 145.  
 Representations as to rejection of applications, see post, § 300.  
 Validity of standard policy law, see ante, § 3.

(a) A life policy of insurance reciting that it was "signed and delivered" is not a specialty because there is a printed device thereon purporting to be a seal, when there is no evidence that this device was ever adopted by the company as its seal.—*Metropolitan Life Ins. Co. v. Anderson*, 79 Md. 375, 29 Atl. 606.

### § 134. Papers accompanying policy.

### § 135. Incorporation of constitution, by-laws, or rules of insurer.

#### Cross-References.

Constitution or by-laws of mutual benefit association, see post, §§ 718, 719.  
 Construction as part of policy, see post, § 152.

### § 136. Delivery and acceptance of policy.

#### Cross-References.

Commencement of risk, see post, § 175.  
 Delivery and acceptance of assignment, see post, § 211.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

Delivery and acceptance of certificate of mutual benefit insurance, see post, § 720.  
 Delivery ground of estoppel or waiver, see post, § 389.

**Annotation.**

Effect of stipulation in application or policy of life insurance that it shall not become binding unless delivered to assured while in good health.—17 L. R. A. (N. S.) 1144; 43 L. R. A. (N. S.) 725, notes.

**§ 137. Payment of premium or dues.**

**Cross-References.**

Actions for premiums, see post, § 188.  
 Amount of premium, see post, §§ 183, 184.  
 Commencement of risk, see post, § 175.  
 Mutual benefit insurance, see post, § 721.  
 Payment of premiums, dues, and assessments by note, see post, § 187.  
 Payment of premiums, dues, and assessments in general, see post, § 186.  
 Persons liable for premiums, see post, § 182.  
 Recovery of premium paid on failure to issue or deliver policy, see post, § 198.

(a) In a suit on a fire policy, *held*, that the insurer could not escape liability upon the ground that premiums were never paid.—*National Union Fire Ins. Co. v. Baltimore Asbestos Co.*, 122 Md. 121, 89 Atl. 408.

(b) A policy of fire insurance contained a condition that the insurer should not be liable until the premium should be actually paid in full. A subsequent condition provided that the insured should be allowed a certain time to pay the premium, and that if the insured did not pay the premium within that time the policy should be null and void. The property was destroyed before the premium was paid, and before the expiration of the time limited for its payment. The insured, after the loss, and before the expiration of the time limited, tendered payment of the premium, which was refused. *Held*, that the condition that the policy should be void if the premium was not paid within the stipulated time left it optional with the insured to complete the contract or not; that until the premium was actually paid there was no mutuality in the contract; and consequently that, as the loss occurred before the payment of the premium, the risk never attached, and the insurer was not liable.—*Bradley v. Potomac Fire Ins. Co.*, 32 Md. 108, 3 Am. Rep. 121.

**§ 138. Validity in general.**

**Cross-References.**

Insurance without interest, see ante, §§ 119, 120.  
 Recovery of premium paid for void policy for fraud of company or agent, or issued without knowledge of insured, see post, § 198.  
 Validity of assignment, see post, § 212.  
 Validity of conditions as to proofs of loss, see post, § 539.  
 Validity of provisions of policy relating to title or interest, see post, § 282.

**Annotation.**

Effect of discrimination among insurers upon the contract of insurance and its incidents.—35 L. R. A. (N. S.) 485, note.

**§ 139. Legality of object.**

**Cross-Reference.**

Agreements to make loans on policies, see post, § 179½.

**Annotation.**

Validity of fire insurance on property illegally used.—40 L. R. A. 845, note.

(a) A contract insuring a carrier of passengers against liability for injuries to such passengers is not void as against public policy in that it relieves the carrier of his duties to the public, or lessens his liability for negligence.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated in 46 L. R. A. (N. S.) 187, on right of receiver to insurance funds deposited with state official; in 55 L. R. A. 50, on set-off in bankruptcy; in 19 L. R. A. (N. S.) 640, on right to return of premiums on adjudication of insurer.]

**§ 140. Partial invalidity.**

**Cross-Reference.**

Entire and severable contracts, see post, § 179.

**§ 141. Estoppel or waiver as to defects or objections.**

**Cross-References.**

Estoppel, waiver, or agreements affecting right to avoid or forfeit policy, see post, §§ 371-401.  
 Estoppel to deny insurable interest, see ante, § 117.  
 Mutual benefit insurance, see post, § 724.

**Annotation.**

Retention of policy as waiver of mistake or fraud of insurer or its agent.—67 L. R. A. 705, note.

(a) In view of a fire insurance company's ability to ascertain a mistake in the description of the insured property, *held* that it could not rely upon such mistake as an equi-

table defense to an action on the policy.—*Citizens Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 116 Md. 422, 82 Atl. 372.

(b) Where a policy duly executed and delivered recites that the premium has been paid, the company will be estopped, in an action on the policy, from denying the same, in the absence of fraud or mistake.—*Consolidated Real-Estate & Fire Ins. Co. v. Cashow*, 41 Md. 59. [Cited and annotated in 25 L. R. A. 453, on oral proof of foreign laws; in 8 L. R. A. (N. S.) 847, 849, 858, on reinsurer's liability.]

#### § 142. Ratification of defective or invalid contract.

##### Cross-Reference.

Ratification of acts of agents in general, see ante, §§ 94, 112.

#### § 143. Reformation.

##### Cross-References.

Adequacy of remedy at law, see "Reformation of Instruments," § 3.

Effect of provisions in policy on right to reform same, see "Reformation of Instruments," § 32.

Mutuality of mistake, see "Reformation of Instruments," § 19.

Relief awarded, see "Reformation of Instruments," § 47.

Sufficiency of evidence, see "Reformation of Instruments," § 45.

Sufficiency of pleading, see "Reformation of Instruments," § 36.

##### Annotation.

Reformation of insurance policy for mistake of soliciting agent.—11 L. R. A. (N. S.) 357, note.

Necessity for reforming policy before recovery in case of mistake.—2 L. R. A. (N. S.) 548, note.

(a) A fire policy required that if the interest of the assured were any other than entire, or if the building stood on leased ground, it should be so represented to the company, and so expressed in the written part of the policy, otherwise the same should be void. There was also a clause that the policy should be void if the interest of the assured in the property should not be truly stated therein. The property was insured as that of B., the assured, but B. had previously borrowed \$6,000 from H. and created a ground rent in his favor of \$420 a year, redeemable on payment of the sum advanced, being in effect a lease for 99 years, and this fact was not written on the policy. *Held*, that a bill in equity would not lie to reform

the policy, though relief was sought on the ground of mistake, caused by the inadvertence of S., the agent of the company, and of J., the agent of B., to both of whom the nature of H.'s interest was alleged to have been known.—*Farmville Insurance & Banking Co. v. Butler*, 55 Md. 233. [Cited and annotated in 28 L. R. A. (N. S.) 836, on relief from mistake of law as to effect of instrument.]

(b) Where a policy contains a misdescription of the interest covered, caused by a mistake of the agent, the policy may be reformed so as to make it express the contract of the parties.—*Ben Franklin Ins. Co. v. Gillett*, 54 Md. 212. [Cited and annotated in 67 L. R. A. 732, on retention of policy as waiver of mistake or fraud of insurer or agent; in 70 L. R. A. 527, 535, 546, on non-resident's right to sue foreign corporation; in 28 L. R. A. (N. S.) 834, on relief from mistake of law as to effect of instrument.]

#### § 144. Modification.

(a) An entry by the clerk of an insurance company, in the record of a policy of insurance in the record book, of an alteration made by him in such policy, is constructive notice to the company, and as binding on them as actual notice.—*Washington Fire Ins. Co. v. Davison*, 30 Md. 91. [Cited and annotated in 26 L. R. A. 239, on location of movable property as affecting fire insurance.]

#### § 145. Renewal.

##### Cross-Reference.

Waiver of privilege of physician not extended to renewal policy, see "Witnesses," § 219.

##### Annotation.

Validity of oral agreement to renew or extend policy.—22 L. R. A. 772, note.

(a) Payment of annual premiums on an accident insurance policy, pursuant to its terms, was not a new contract, but merely extended the original contract; the policy expressly providing for renewal by payment of annual premium in advance.—*Standard Accident & Life Ins. Co. v. Wood*, 116 Md. 575, 82 Atl. 702.

(b) Evidence that defendant's agent, upon making inquiry of plaintiff as to whether he wished to have renewed a certain policy of insurance, was answered in the affirmative, and that the insured would send him a check soon for the premium, to which the agent re-



plied, "All right," and that he would attend to it, knowing what policy was intended, and without indicating any intention not to renew, is insufficient to show a renewal of the policy.—*Mallette v. British-American Assur. Co.*, 91 Md. 471, 46 Atl. 1005. [Cited and annotated in 48 L. R. A. (N. S.) 321, 322, on terms and conditions of usual policy as affecting claim under oral insurance contract or for damages for breach of contract to issue policy.]

(c) When there is an agreement for the renewal of a policy, the insured is justified in assuming that the premium and all the terms and conditions of the renewal will be the same as those of the original, unless he has notice to the contrary.—*Mallette v. British-American Assur. Co.*, 91 Md. 471, 46 Atl. 1005. [Cited and annotated, see supra.]

(d) Where, after the expiration of a marine policy, insurance was continued under its terms, by agreement, covering another and more extensive voyage, the acceptance of the risk under such agreement constituted a new and distinct contract of insurance, though no new policy was issued.—*Leftwich v. Royal Ins. Co.*, 91 Md. 596, 46 Atl. 1010.

(e) Where, under a policy of insurance, the option is given to renew the same at its expiration, and the insured, having elected to renew, notified the company of its election, such notification will not bind the company unless accompanied by payment or tender of payment of the premiums.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated, see supra, § 139.]

(f) A firm consisting of two members insured their stock against fire, and subsequently introduced another member, but without changing the name of the firm. The policy was under seal, and provided "that this insurance shall continue and be in force \* \* \* so long as the said assured, or their assigns, shall continue to pay the like premium as hath been paid for this insurance; \* \* \* provided, that a premium for a continuance of the insurance shall be actually paid by the assured, or their assigns, \* \* \* and \* \* \* a receipt therefor given by this corporation." Renewal premiums were duly paid by the firm, and re-

newal receipts taken therefor, until April, 1886, when a fire occurred. Held, that the covenant in the policy contemplated the continuance or extension of the contract of insurance from year to year as a specialty, and the payment of the yearly premiums so continued it.—*Firemen's Ins. Co. v. Floss*, 67 Md. 403, 10 Atl. 139, 1 Am. St. Rep. 398. [Cited and annotated in 21 L. R. A. (N. S.) 444, on formation of partnership or change in personnel of firm as affecting change of title or ownership within provision of policy.]

(g) A firm consisting of two members insured their stock against fire by a policy under seal, and subsequently introduced another member without changing the firm name. The policy did not contain a covenant for continuance or extension, but expressly declared that it should only continue for one year. Renewal premiums were paid by the firm, and renewal receipts taken therefor, each year until a fire occurred. Held, that the policy as a specialty did not admit of an extension, but that the renewal receipts constituted distinct parol contracts, referring to and incorporating the terms of the original policy.—*Firemen's Ins. Co. v. Floss*, 67 Md. 403, 10 Atl. 139, 1 Am. St. Rep. 398. [Cited and annotated, see supra.]

## (B) CONSTRUCTION AND OPERATION.

### Cross-References.

- Actions on policies, see post, §§ 621-623.
- Construction of assignment, see post, § 213.
- Effect of provisions of policy as to powers of agent, see ante, §§ 90, 99.
- Extent of liability of insurer, see post, § 468.
- Mutual benefit insurance contracts, see post, § 726.
- Of warranties, see post, § 264.
- Provisions against forfeiture, see post, § 400.
- Provisions as to cancellation, see post, § 236.
- Provisions as to waiver of stipulations, conditions, or forfeitures, see post, §§ 376, 386.
- Provisions for adjustment of loss, see post, §§ 563-579.
- Requirements as to notice and proof of loss, see post, §§ 533-562.
- Right to proceeds, see post, §§ 580-594.
- Risks and causes of loss within provisions of policy, see post, §§ 402-467.
- Decisions of state courts construing policies as authority in federal courts, see "Courts," § 372.

Effect of insurance of goods, on liability of carrier for loss or injury in course of transportation, see "Carriers," § 125.  
Provisions making physician competent witness, see "Witnesses," § 219.

#### § 146. Application of general rules of construction.

(a) Where the language of an insurance policy is clear and simple, nothing ought to be imported into it by construction.—*Mutual Life Ins. Co. v. Murray*, 111 Md. 600, 75 Atl. 348.

(b) The rule that insurance contracts will not be construed strictly against insurer, but will be construed as other contracts, does not conflict with the general rule, governing the construction of all contracts, that, where doubt exists as to the meaning of a contract prepared by one party on the faith of which the other has incurred obligation, that construction should be adopted which will be favorable to the latter party.—*McEvoy v. Security Fire Ins. Co.*, 110 Md. 275, 73 Atl. 157, 22 L. R. A. (N. S.) 964. [Cited and annotated in 21 L. R. A. (N. S.) 104, on liability of insurer for fire caused by earthquake.]

(c) The mutual intention of the parties to a contract of insurance must govern its construction, where that can be reasonably deduced from the contract itself; but, where the contract is so expressed as to be susceptible of two interpretations, that interpretation will be adopted which will uphold, rather than defeat, the validity of the contract.—*McEvoy v. Security Fire Ins. Co.*, 110 Md. 275, 73 Atl. 157, 22 L. R. A. (N. S.) 964. [Cited and annotated, see supra.]

(d) A policy of insurance should be construed according to the plain, ordinary, and usual meaning of the language used to carry out the intention of the parties as gathered therefrom.—*Palatine Ins. Co. v. O'Brien*, 107 Md. 341, 68 Atl. 484. [Cited and annotated in 47 L. R. A. (N. S.) 291, 296, on what constitutes insurance: in 23 L. R. A. (N. S.) 123, 124, on rent insurance.]

(e) There is a distinction in cases where the preparation of an instrument belongs to the party to become liable under it. He ought to be dealt with more strictly, and insurance contracts are within this principle.—*National Fire Ins. Co. v. Crane*, 16 Md.

260, 77 Am. Dec. 239. [Cited and annotated in 28 L. R. A. (N. S.) 832, 917, 918, 919, on relief from mistake of law as to effect of instrument.]

#### § 147. What law governs.

##### Cross-References.

Surrender values, see post, § 351.

Mutual benefit insurance, see post, § 712.

##### Annotation.

Conflict of laws as to contracts of insurance.—63 L. R. A. 856, note.

(a) An express stipulation, in an application for insurance, made in Maryland, that the contract and the policy should be construed according to the law of New York held a stipulation which the parties were competent to make.—*Williams v. New York Life Ins. Co.*, 122 Md. 141, 89 Atl. 97. [Cited and annotated in 52 L. R. A. (N. S.) 286, on conflict of laws as to insurance.]

(b) The fact that a policy given in Maryland is made by its terms a New York contract does not require the courts of Maryland, when called upon for construction, to look to New York for authority.—*Robinson v. Hurst*, 78 Md. 59, 26 Atl. 956. [Cited and annotated in 30 L. R. A. 610, as to who are "legal representatives" within life policies; in 53 L. R. A. 354, on moral obligation as consideration; in 63 L. R. A. 859, on conflict of laws as to insurance contracts; in 64 L. R. A. 859, on execution by will, of power of appointment; in 67 L. R. A. 550, on homicide to prevent criminal or unlawful acts; in 26 L. R. A. (N. S.) 522, on moral obligation as consideration for express promise.]

§§ 148, 149. (See Analysis.)

#### § 150. Matter on margin of, or slip attached to, policy.

##### Annotation.

Effect of riders or slips attached to insurance policies.—30 L. R. A. 636, note.

(a) The mere fact of the fastening of a slip to a policy cannot make it a part of the contract, where there is no reference on either policy or slip from one to the other.—*Williams v. New York Life Ins. Co.*, 122 Md. 141, 89 Atl. 97. [Cited and annotated, see supra, § 147.]

(b) Typewritten paper, pasted to a 20-premium policy, entitled "statement," and purporting to show the cash value of the policy above reserve at its termination, held, in view of the character of the policy and the

impossibility of making more than an estimate of such value, not to state a definite guaranteed cash payment at the expiration of the term.—*Williams v. New York Life Ins. Co.*, 122 Md. 141, 89 Atl. 97. [Cited and annotated, see *supra*, § 147.]

(c) An indorsement upon a policy of fire insurance to the effect that, whenever any alteration is to be made in the property, the insured shall make application to the secretary, etc., who shall examine the property, and certify whether the hazard be thereby increased or not, etc., form no part of the contract, unless referred to in the policy as constituting part of it.—*Planters' Mut. Ins. Co. v. Rowland*, 66 Md. 236, 7 Atl. 257. [Cited and annotated in 45 L. R. A. (N. S.) 125, on change in use or condition of mill or factory as avoiding policy.]

#### § 151. Construing together policy and accompanying papers.

#### § 152. Construing statutes and charters, by-laws, or rules of insurer as part of policy.

##### Cross-References.

By-laws of mutual company binding on member in general, see *ante*, § 55.  
Incorporation in policy, see *ante*, § 135.

(a) A contract with a mutual insurance company cannot be construed unless the constitution and by-laws are before the court, since the latter are a part of the contract, whether or not specifically mentioned.—*Condon v. Mutual Reserve Fund Life Ass'n*, 89 Md. 99, 42 Atl. 944, 44 L. R. A. 149, 73 Am. St. Rep. 169. [Cited and annotated in 70 L. R. A. 539, 541, on nonresident's right to sue foreign corporation.]

(b) In a suit on a policy of life insurance, the charter and by-laws of a mutual insurance company, and a table referred to in the application for insurance, are admissible in construing the policy.—*Mutual Life Ins. Co. v. Bratt*, 55 Md. 200.

#### § 153. Usages of business.

##### Cross-Reference.

Usages in general, see "Customs and Usages," §§ 5, 17, 20.

(a) Local customs or usages in a particular city relating to insurance contracts cannot affect contracts in other cities.—*Mason v. Franklin Fire Ins. Co.*, 12 G. & J. 468.

(b) Where a policy provided that in case of loss the same should be paid in 90 days after "proof and adjustment thereof," evidence of a usage that, although the losses were claimed under a valued policy, the insurer was entitled to the production of a bill of lading and invoice of the cargo, was admissible, as explaining what was included in the term "proof of loss."—*Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289. [Cited and annotated in 15 L. R. A. 142, on agreements to arbitrate; in 47 L. R. A. (N. S.) 359, 360, 413, 427, 429, on arbitration agreements; in 15 L. R. A. (N. S.) 1073, on arbitration as condition precedent to action on policy.]

§§ 154, 155. (See Analysis.)

#### § 156. Parties to contract and relations between them.

##### Cross-References.

Parties affected by avoidance of policy, see *post*, §§ 271, 311.  
Vested interests of beneficiary, see *post*, § 586.

(a) A firm consisting of two members insured their stock against fire by a policy under seal, and subsequently introduced another member without changing the firm name. The policy did not contain a covenant for continuance or extension, but expressly declared that it should only continue for one year. Renewal premiums were paid by the firm and renewal receipts taken therefor each year until a fire occurred. Held, that, as the policy, as a specialty, did not admit of extension, but the renewal receipts would be regarded as constituting distinct parol contracts made with all the partners, and referring to and incorporating the terms of the original policy, such a receipt was enforceable by all of the partners.—*Firemen's Ins. Co. v. Floss*, 67 Md. 403, 10 Atl. 139, 1 Am. St. Rep. 398. [Cited and annotated in 21 L. R. A. (N. S.) 444, on formation of partnership or change in personnel of firm as affecting change of title or ownership within provision of policy.]

(b) Where a carrier insures property in its hands for transportation, in its own name, for the benefit of whom it may concern, a recovery may be had on such a policy to the extent of the interest of any one who could be considered as having been within the contemplation of the carrier, and who, even after loss, adopts the contract of insurance,

although the loss is not one for which the carrier would be responsible on its contract of carriage.—*Fire Ins. Ass'n v. Merchants & Miners Transp. Co.*, 66 Md. 339, 7 Atl. 905, 59 Am. Rep. 162. [Cited and annotated in 52 L. R. A. 331, 342, on when insurable interest must exist under fire policies; in 13 L. R. A. (N. S.) 154, on right to insurance taken in agent's name.]

(c) An insurance policy under seal was issued to J. McGowan & Sons for one year, with a covenant that it should continue so long as the "assured or their assigns" shall pay the premium, and the company shall accept and receive the same from them. At the time the policy was issued, the firm of J. McGowan & Sons was composed of the plaintiffs and another party, who retired from the firm during the first year, and the business was conducted by the plaintiffs under the same name. The day preceding the expiration of the policy the premium for the second year was paid, and a renewal receipt indorsed upon the policy, stating that the company had received the premium from J. McGowan & Sons under the policy, "which is hereby continued in force" for another year. A loss occurred during the second year, and plaintiffs brought suit to recover therefor. Held, that the renewal receipt was simply an extension for another year of the original sealed contract, and the plaintiffs, not being the covenantees nor their assignees, could not maintain an action of covenant upon the policy.—*Baltimore Fire Ins. Co. v. McGowan*, 16 Md. 47. [Cited and annotated in 21 L. R. A. (N. S.) 444, on formation of partnership or change in personnel of firm as affecting change of title or ownership within provision of policy.]

(d) An insurance policy under seal was issued to J. M. & Sons for one year, with a covenant that it should continue so long as the assured or their assigns should pay the premium, and the company should accept and receive the same from them. At the time the policy was issued the firm of J. M. & Sons consisted of plaintiffs and another person, who retired from the firm during the first year, and the business was conducted by plaintiffs under the same name. The day preceding the expiration of the policy the premium for the second year was paid, and a renewal receipt indorsed on the policy,

stating that J. M. & Sons had paid the premium under the policy, "which is hereby continued in force" for another year. A loss occurred during the second year. Held, that since the contract was joint, and whatever sum could be recovered would be in solido, plaintiffs could not alone maintain an action on the policy.—*Baltimore Fire Ins. Co. v. McGowan*, 16 Md. 47. [Cited and annotated, see supra.]

(e) A policy of insurance on cargo "for whom it may concern," can only inure to the benefit of a party who was, at the time of effecting it, in the contemplation of the person who procured it; and when such a policy is obtained without intending to cover any particular cargo, but only to protect whatever cargo may be shipped in a certain vessel for a certain voyage, it will not inure to the benefit of a party who afterwards ships his goods on the faith of it, and adopts the act of the person who obtained it, but does not take a valid assignment of it.—*Augusta Ins. & Banking Co. v. Abbott*, 12 Md. 348. [Cited and annotated in 47 L. R. A. (N. S.) 197, on right to insurance taken out by carrier; in 13 L. R. A. (N. S.) 152, on right to insurance taken in agent's name.]

(f) The words in a policy, "for whom it may concern," imply an agency, and look to the principal, whose existence may be proved by letters, etc., on the trial.—*Newson's Adm'r v. Douglass*, 7 H. & J. 417, 16 Am. Dec. 317. [Cited and annotated in 47 L. R. A. (N. S.) 198, on right to insurance taken out by carrier; in 13 L. R. A. (N. S.) 152, on right to insurance taken in agent's name.]

#### § 157. Subject-matter insured in general.

#### § 158. Subjects of marine insurance.

#### § 159.—In general.

(a) An insurance, for a premium, for the voyage round, at and from B. to C. with the privilege of one other port, in the same island with C., and at and from either of them back to B., on freight laden or to be laden, valued at the sum insured, is upon separate and distinct voyages, during the prosecution of which distinct freights were at risk, and to each of which, as they successively came into existence, the whole valuation in the policy ought to be applied, and a total loss on the homeward voyage

paid for accordingly.—*Patapsco Ins. Co. v. Biscoe*, 7 G. & J. 293.

(b) The word "cargo," in a policy of insurance, does not ordinarily cover live stock; but if live stock constitute the only article of exportation from the port from which the vessel is to sail, to the port to which she is destined, or if, according to the mercantile usage of the place of effecting the insurance, the word is understood to cover live stock, then an insurance under that general denomination will cover it.—*Allegre v. Maryland Ins. Co.*, 2 G. & J. 136.

#### § 160.— Open or running policies.

(a) Plaintiff applied through brokers to defendant's agent for insurance on a cargo then loading. The agent notified plaintiff that the risk was accepted, and ordered him to send his book by the brokers, and have the risk entered. Plaintiff notified the brokers, but by mistake the risk was not entered, though all parties supposed it had been, until the loss of the cargo was reported. The policy was an "open policy," with book attached, in which the details of the risk were entered at convenience, and were often made after the voyage had terminated. Premiums were not required when the risk was effected, but were settled monthly. *Held*, that equity would enforce the entry of the risk, and payment of the insurance, though the policy provided that no shipment was insured until approved and indorsed on the book by the agent.—*Phoenix Ins. Co. v. Ryland*, 69 Md. 437, 16 Atl. 109, 1 L. R. A. 548. [Cited and annotated in 22 L. R. A. 771, on validity of oral insurance contract; in 28 L. R. A. (N. S.) 814, 919, on relief from mistake of law as to effect of instrument.]

(b) A running policy of marine insurance contained a stipulation that no shipments should be considered as insured until approved and indorsed on the policy, the valuation to be fixed by the indorsement. *Held*, that the policy was not an open, but a valued, one; that each indorsement of a shipment and the valuation thereof constituted a separate and distinct contract of insurance; and that the contract was not complete, as to any specific shipment, until the valuation thereof was indorsed on the policy.—*Schaefer v. Baltimore Marine Ins. Co.*, 33 Md. 109.

#### § 161. Property covered by insurance against fire or other cause of loss.

##### Cross-References.

Prohibited articles, see post, § 326.

Reformation of policy as to property or interest covered, see ante, § 143.

#### § 162.— In general.

(a) In a valued policy against fire "on a new bark now being built," it was *held*, that, in the absence of proof of usage, the policy did not attach upon articles made for the vessel, delivered in the shipyard where she was constructing, in a condition to be attached and fitted to her as soon as she might be ready to receive them.—*Mason v. Franklin Fire Ins. Co.*, 12 G. & J. 468.

#### § 163.— Description of property.

##### Annotation.

Import of word "additions" in policy of fire insurance.—33 L. R. A. (N. S.) 156, note.

(a) A flour mill, driven by steam, and furnished with a middling purifier, bran duster, belting, and other machinery, is a "manufacturing" establishment. So *held* in construing an insurance policy.—*Carlin v. Western Assur. Co.*, 57 Md. 515, 40 Am. Rep. 440.

(b) A policy on a "stock in trade, consisting of grain, guano, and salt," covers fertilizer owned by insured and carried as a part of their stock.—*Planters' Mut. Ins. Co. v. Engle*, 52 Md. 468. [Cited and annotated in 52 L. R. A. 343, on when insurable interest must exist under fire policies.]

(c) The preliminary proofs of loss, by fire, of a tannery, furnished to the insurance company contained the following statement: "Stock in tannery, hides and leather, \$56,500." *Held*, that the court properly refused to instruct the jury that "stock" referred exclusively to hides and leather, and did not embrace bark, etc., properly belonging to the business of the tannery.—*Planters' Mut. Ins. Co. v. Deford*, 38 Md. 382. [Cited and annotated in 16 L. R. A. 36, on effect of agent's knowledge of falsity of statements in application; in 17 L. R. A. 273, on parol evidence to vary, etc., written contract; in 44 L. R. A. 850, on conclusiveness of proof of loss as against insured or beneficiaries; in 32 L. R. A. (N. S.) 457, on insurance: effect of false swearing in proofs of loss.]

**§ 164.—Description of title or interest.****Cross-Reference.**

Representation or warranty as to title and interest, see post, § 282.

**Annotation.**

Interests covered by particular designation of insured on property belonging to a decedent's estate.—42 L. R. A. (N. S.) 79, note.

(a) The conditions of a fire policy, issued to insured alone, when the property was owned by him and his wife, and not disclosing such fact or the presence of a mortgage on the property, that it shall be void if the interest of insured be not truly stated, or be other than unconditional and sole ownership, are waived by a rider making the loss payable to assured "as interest may appear."—*Bakhaus v. Caledonian Ins. Co.*, 112 Md. 676, 77 Atl. 310.

(b) By the terms of the printed part of a fire policy issued to a carrier, the insurer agreed "to make good unto the said assured, their successors, executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum or sums insured as above specified, nor the interest of the assured in the property, except as herein provided, as shall happen by fire to the property." *Held*, that the words "except as herein provided" modify the immediately preceding clause, and not the words "loss or damage," and that the insurance was not limited to the interest of the assured in the property, other and written parts of the policy showing an intention to insure the owner's interest.—*Fire Ins. Ass'n v. Merchants & Miners Transp. Co.*, 66 Md. 339, 7 Atl. 905, 59 Am. Rep. 162. [Cited and annotated in 52 L. R. A. 331, 342, on when insurable interest must exist under fire policies; in 13 L. R. A. (N. S.) 154, on right to insurance taken in agent's name.]

(c) An application for insurance, which was made part of the policy issued upon said application, stated that the applicants proposed to insure "our property, which we describe as follows: No. 1. Three thousand dollars on stock in trade, consisting of grain, guano, and salt, in forwarding house." The applicants bought and sold grain. They also sold fertilizers on commission, certain of which were damaged by fire. After the fire, insured wrote to insurer, stating that they

did not think goods received by them on commission were covered by policy. *Held*, that the policy embraced only such stock in trade as belonged to the plaintiffs, and did not therefore embrace fertilizers consigned to them for sale on commission.—*Planters' Mut. Ins. Co. v. Engle*, 52 Md. 468. [Cited and annotated, see supra, § 163.]

(d) "Held in trust," as used in a policy of insurance, means, as applied to the goods insured, not goods held in trust in the strict technical sense of the term,—so *held*, and that there is only an equitable obligation in the assured, enforceable by a subpoena in chancery,—but goods with which the assured are "intrusted," in the ordinary sense of the word.—*Hough v. People's Fire Ins. Co.*, 36 Md. 398. [Cited and annotated in 52 L. R. A. 342, on when insurable interest must exist under fire policies; in 16 L. R. A. (N. S.) 1182, on parol-evidence rule as to varying or contradicting written contracts, as affected by doctrine of waiver or estoppel of insurer.]

(e) Where a policy of insurance contained a condition that it should not cover goods held in trust or on commission unless they were so declared, and insurance appeared to have been obtained under it, without making any specific statement of the nature of the interest in the goods destroyed, *held*, that knowledge of such condition by the insured must be presumed from their acceptance of the policy, and that it limited the risk to the goods which belonged to them.—*Baltimore Fire Ins. Co. v. Loney*, 20 Md. 20. [Cited and annotated in 52 L. R. A. 343, on when insurable interest must exist under fire policies.]

**§ 165.—Description of location.****§ 166.—Shifting risk.****§ 167. Titles insured.****§ 168. Duties and obligations guaranteed.**

(a) Where a bond given to insure a merchant against losses arising from the insolvency of debtors provided that losses on claims under extension at the time of the payment of the premium should not be included in the calculation of losses, the mere taking of notes as evidence of antecedent debts was not an extension, within the meaning of the bond, though such notes matured at a later date than the open accounts for

which they were substituted.—*Strouse v. American Credit Indemnity Co.*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. v. Strouse*, Id.

**§ 169. Persons covered by life or accident insurance.**

**§§ 170-174. Amount of insurance.**

*Cross-References.*

Amount of recovery in action on policy, see post, § 666.

Effect of amendment of by-laws, see ante, § 152.

Insurance for less amount after default in payment of premium, see post, § 367.

Provisions reducing amount on misrepresentation as to age, see post, § 290.

Statutory provisions relating to amount of insurance, see ante, § 4.

(a) An insurance, for a premium for the voyage round, at and from B. to C., with the privilege of one other port, in the same island with C., and at and from either of them back to B., on freight laden or to be laden, valued at the sum insured, is upon separate and distinct voyages, during the prosecution of which distinct freights were at risk, and to each of which, as they successively came into existence, the whole valuation in the policy ought to be applied, and a total loss on the homeward voyage paid for accordingly.—*Patapsco Ins. Co. v. Biscoe*, 7 G. & J. 293, 28 Am. Dec. 319.

**§ 175. Commencement of risk.**

*Cross-References.*

Application or offer and acceptance, see ante, § 130.

Binding receipts, see ante, § 132.

Delivery and acceptance of policy, see ante, § 136.

Payment of premium or dues, see ante, § 137.

(a) A fire insurance policy, dated December 22, 1905, insuring plaintiff for one year from noon of that day, was delivered to him within a day or two after its date. The amount of the insurance stated in the body of the policy differed from that stated on a typewritten slip attached, which was incorrect. The slip was corrected by the company's agent on January 29, 1906, at which time plaintiff paid the premium. The agent had agreed, on December 22, 1905, to issue the policy, and had then told plaintiff he would send it to him, but that he was insured from that date. Plaintiff testified that he paid the premium on the policy for the year beginning December 22, 1905. *Held*, that

the risk commenced December 22, 1905.—*Reynolds v. German American Ins. Co.*, 107 Md. 110, 68 Atl. 262.

(b) Insurance was effected on the 4th of April, 1831, on a cargo, upon an order referred to in the policy, as follows: "\$4,500 insurance wanted on cargo of schooner Argonaut, Captain M., at and from St. A., with liberty of two ports on the Spanish main, and at and from any of them to B., with a return for each port not used. Captain D., of the schooner D., arrived here a few days since from San Blas, and reports that the A. sailed from San Blas for St. A. about the middle of February to trade, which is the last account received of her proceedings." The loss occurred on the voyage from San Blas to St. A. *Held*, that the insurers were not liable, the loss happening before the risk commenced.—*Maryland Ins. Co. v. Bossiere*, 9 G. & J. 121.

**§§ 176-178. Term and duration of risk.**

*Cross-References.*

Cancellation of policy as termination thereof, see post, §§ 226-249.

Insurance for limited term after default in payment of premium, see post, § 367.

Reformation of policy as to term and duration, see ante, § 143.

Termination by falling of building, see post, § 324.

Computation of time, see "Time," § 14.

(a) A fire policy expressed to cover "the risk of fire on shore for 10 days prior to shipment" *held* to mean for 10 days after the issuance of the policy.—*Fire Ins. Ass'n v. Merchants & Miners Transp. Co.*, 66 Md. 339, 7 Atl. 905, 59 Am. Rep. 162. [*Cited and annotated* in 52 L. R. A. 331, 342, on when insurable interest must exist under fire policies; in 13 L. R. A. (N. S.) 154, on right to insurance taken in agent's name.]

**§ 179. Entire or severable contract.**

*Cross-References.*

Breach of iron safe clause, see post, § 335.

Change of title or interest as to part of property, see post, § 328.

Effect of incumbrance on part of property, see post, § 330.

Effect of misrepresentation breach of warranty or condition as to title to part of property, see post, § 282.

Effect of other insurance as to part of property, see post, § 288.

Incumbrance of part of property, see post, § 283.

Limitation of liability, see post, § 478.

Overvaluation as to part of property, see post, § 281.

**Annotation.**

As to severability of insurance in same policy.—19 L. R. A. 212, note.

(a) A policy of insurance covering buildings and machinery is not severable as to either portion of the risk.—*Bowman v. Franklin Fire Ins. Co.*, 40 Md. 620. [Cited and annotated in 19 L. R. A. 214, on severability of insurance in same policy.]

(b) A policy of insurance to the amount of \$1,000, divided in stated sums between different classes of property, is not severable.—*Associated Firemen's Ins. Co. v. Assum*, 5 Md. 165. [Cited and annotated in 19 L. R. A. 218, on severability of insurance in same policy.]

**§ 179½. Loans on policies.****Cross-References.**

Deduction of loan from liability under policy, see post, § 523.

Forfeiture of policy for nonpayment of premium loans, see post, §§ 349-370.

Rights of assignee of policy as security to proceeds, see post, § 593.

Transfer of policy to third person as collateral for loan, see post, § 222.

**VI. PREMIUMS, DUES, AND ASSESSMENTS.****Cross-References.**

Demand, acceptance or retention of premiums or assessments as ground of estoppel or waiver, see post, § 392.

Forfeiture for nonpayment, see post, §§ 349, 370, 749-754.

Guaranty obligations, see ante, § 60.

Mutual benefit insurance, see post, § 731.

Of reinsurance, see post, § 680.

Paid-up policy after default in payment of premiums, see post, § 368.

Payment as essential element of contract, see ante, § 137; post, § 721.

Agreement by agent to pay premium as within statute of frauds, see "Frauds, Statute of," § 33.

Liability for return of premiums fraudulently collected by agent, see "Principal and Agent," § 158.

Liability of premiums, or receipts to taxation, see "Taxation," § 140.

Maritime liens for insurance premiums, see "Maritime Liens," § 13.

Parol or extrinsic evidence to vary or contradict receipt of payment, see "Evidence," § 408.

Payment by husband out of community funds of premiums on policy insuring life of wife, see "Husband and Wife," § 265.

Payment of premium fraudulent as to creditors, see "Fraudulent Conveyances," § 39.

Subrogation of agent to insurer's right to collect premiums, see "Subrogation," § 10.

**§ 180. Nature and grounds of obligation.****§ 181. Right of insurer to premium.****Cross-Reference.**

Deduction of installments of premium, see post, § 523.

**§ 182. Persons liable for premiums.****Cross-Reference.**

Violation of covenant not to sublet as rendering lessee liable for extra insurance premium resulting therefrom, see "Landlord and Tenant," § 76.

**§ 183. Amount of premiums.****§ 184. Rebates from premiums.****Cross-References.**

Accounting by agent, see ante, § 82.

Discrimination between insurants, see ante, § 138.

Application of general statute of limitations to penalties for rebating, see "Limitation of Actions," § 35.

**§ 185. Reduction of premiums by profits or dividends.****Cross-References.**

Application of dividends after default, see post, § 368.

Right to share in profits, dividends or surplus in general, see ante, §§ 38, 59.

**§ 186. Payment of premiums.****Cross-References.**

Payment of first premium to give effect to renewal, see ante, § 145.

Recovery of premiums paid, see post, § 198.

Sufficiency of payment to prevent forfeiture, see post, §§ 360, 361.

Waiver of payment of first premium, see ante, § 141.

Sufficiency of tender, see "Tender," § 16.

**Annotation.**

Payment of premium after death to keep insurance in force.—14 L. R. A. 283, note.

Validity of payment of premium or assessment during period of extension agreed upon, but after insured's death.—2 B. R. C. 191, note.

(a) Plaintiff, who was owing defendant the sum of \$10 upon other policies than the one in suit, sent to defendant's agent a check for \$20, with the promise to send more in a few days, and the check was accepted and collected. *Held*, that, if the agent accepted the check to apply on the premium for the policy in suit, defendant was liable for a loss occurring before payment of the balance of the premium.—*Mallette v. British-American Assur. Co.*, 91 Md. 471, 46 Atl. 1005. [Cited



and annotated in 48 L. R. A. (N. S.) 321, 322, on terms and conditions of usual policy as affecting claim under oral insurance contract or for damages for breach of contract to issue policy.]

(b) Payment on a premium to a broker authorized to collect and remit the same to the insurance company binds the latter, though it never in fact receives the money from the broker.—*American Fire Ins. Co. v. Brooks*, 83 Md. 22, 34 Atl. 373. [Cited and annotated in 50 L. R. A. (N. S.) 38, on sufficiency of notice of cancellation of fire policy; in 38 L. R. A. (N. S.) 617, 625, on insurance broker as agent for the insured; in 39 L. R. A. (N. S.) 830, on time from which notice of cancellation of fire insurance becomes effective.]

(c) A. applied to B. for insurance for himself and others. The application was accepted, the policy executed, and A., with P., his surety, gave to B. their promissory note for the payment of the premium. At the time A. applied for insurance he did not disclose, nor was he requested so to do, who the persons were for whose benefit, with his own, the insurance was applied for; nor were the parties interested in the insurance known as such to B. until some time after the policy was executed. The note was not paid. No notice was given to C. and D. (who were the other persons interested in the insurance) of the nonpayment of the premium until the note became due, and before that time they had paid to A. their proportions of the premium, without the knowledge of B. *Held*, in an action for the premium by B. against A., C., and D., that the note would not, per se, be sufficient to extinguish the simple-contract debt, if, under the circumstances of the case, the law could imply a promise on their part to pay the premium to B.; but, as B. was satisfied with the responsibility of A. and his surety, and did not intend to look to C. and D., and as it was evident that the insurance was effected by A. as the agent of C. and D., and not as co-partner, B. could not recover.—*Patapsco Ins. Co. v. Smith*, 6 H. & J. 166.

### § 187. Notes for premiums.

#### Cross-References.

Necessity to make policy operative, see ante, § 137.

Bona fide purchasers, see "Bills and Notes," § 332.

Error in middle name of insured as defense to action on note for premium, see "Bills and Notes," § 451.

Right of bona fide holder of note for premium to company which has not paid privilege tax, see "Bills and Notes," § 367.

Turning over premium note in order to liquidate indebtedness as violation of provision that note is not negotiable, see "Bills and Notes," § 214.

Validity of note for unauthorized insurance after passing into hands of bona fide purchaser, see "Bills and Notes," § 342.

Want of consideration as defense, see "Bills and Notes," § 451.

### § 188. Actions for premiums.

#### Cross-References.

Payment of first premium, see ante, § 137.

Action by insurance agent as real party in interest, see "Parties," § 6.

Limitations, see "Limitation of Actions," § 65.

### § 189. Premium or deposit notes.

#### Annotation.

When statute of limitations begins to run against unpaid balance on premium or "stock" notes of mutual insurance company.—1 L. R. A. (N. S.) 914, note.

Suits on premium notes when foreign corporation has not complied with statute as to doing business in state.—20 L. R. A. 407, note.

### § 190. Grounds of assessment in general.

### § 191. Power and duty to make assessment.

#### Cross-References.

Liability of directors for failure to levy assessment, see ante, § 56.

Mandamus to compel assessment to pay judgment, see "Mandamus," § 136.

### § 192. Liability to assessment.

(a) A member of a mutual fire insurance company cannot be assessed on his premium note for losses covering a series of years, during which time various members of the company who would have been liable for their proportionate shares of the losses have ceased to be members of the company, and have hence been released from liability on their notes.—*Mutual Fire Ins. Co. v. Jean*, 96 Md. 252, 53 Atl. 950, 94 Am. St. Rep. 570.

(b) A member of a mutual fire insurance company cannot be assessed on his premium note for the payment of losses which accrued before he became a member.—*Mutual Fire Ins. Co. v. Jean*, 96 Md. 252, 53 Atl. 950, 94 Am. St. Rep. 570.

(c) An insurance policy on live stock provided that it became void by nonpayment of assessments, and could not be reinstated by after payment, but only by consent in writing. Defendant's assessment due April 1st was not paid until April 4th, and then a receipt was given, reciting that the payment was on a void policy, which could only be reinstated by compliance with stated conditions. *Held*, that the policy was forfeited, and a subsequent assessment could not be collected.—*Stockley v. Benedict*, 92 Md. 325, 48 Atl. 59.

### § 193. Amount of assessment.

#### *Cross-Reference.*

Proceeds of assessments as amount of insurance, see ante, § 174.

### § 194. Reduction of assessment by profits or dividends.

### § 195. Levy and collection of assessment.

(a) Where the charter of a mutual fire insurance company, which took premium notes subject to assessment to pay losses, required the directors, whenever a loss should occur, to cause at the next meeting an accurate statement to be made of the proportion or sum to be contributed by each member to make good such loss, and notify the members of the same, and that each member should be bound to make good his proportionate amount of losses, an assessment on a premium note to pay notes given by the company for money borrowed to pay losses during a long series of years, both before and after the maker of the premium note became a member of the company, and during which time there never had been an assessment, was invalid, for noncompliance with the charter regulations as to the time of making assessments.—*Mutual Fire Ins. Co. v. Jean*, 96 Md. 252, 53 Atl. 950, 94 Am. St. Rep. 570.

### § 196. Payment of assessment.

### § 197. Enforcement of assessment.

#### *Cross-References.*

Attorney's fees, see "Costs," § 172.

Limitation of actions, see "Limitation of Actions," §§ 35, 65, 105.

Loss barred by limitations, see "Limitation of Actions," § 172.

(a) Where a premium note provided that the amount should be payable "in such portions and at such times as the directors of

said company may, agreeably to their act of incorporation, require," and the application for insurance stipulated that the said company "will not be bound by any act or statement made to or by the agent, restricting its rights, or varying its written or printed contract, unless inserted in this application in writing," *held*, that oral evidence was not admissible to show that the company's agent had represented to the insured that he would be liable to only a 5 per cent. assessment during any one year.—*Lycoming Fire Ins. Co. v. Langley*, 62 Md. 196. [Cited and annotated in 24 L. R. A. 301, on restrictions on business of foreign insurance companies; in 32 L. R. A. 504, on liability of members of mutual fire insurance companies; in 34 L. R. A. 738, on right to enforce stockholder's liability outside of state of incorporation; in 16 L. R. A. (N. S.) 1204, on parol-evidence rule as to varying or contradicting written contracts, as affected by doctrine of waiver or estoppel of insurer; in 41 L. R. A. (N. S.) 1140, on right to reject or rescind policy not conforming to representations of insurer's agent.]

### § 198. Refunding or recovery of premiums or assessments paid.

#### *Cross-References.*

On cancellation of policy, see post, § 230.

On surrender of policy, see post, § 244.

Remedies on wrongful cancellation, see post, § 237.

Return of premium as condition precedent to pleading defense of misrepresentation, see post, § 615.

On avoidance by infant, see "Infants," § 58.

Right of agent to recover premium illegally paid for insured, see "Contracts," § 138.

Right to recover premiums paid under illegal assignment of policy, see "Contracts," § 138.

Right to returned premiums as between vendor and purchaser of property under terms of contract of sale, see "Vendor and Purchaser," § 199.

#### *Annotation.*

Right of insured to return of premium where policy is void or voidable because of misrepresentations on his part.—32 L. R. A. (N. S.) 298, note.

(a) A member of a mutual life insurance company, who has paid assessments for several years, which have been paid out by the insurer, cannot recover the assessments so paid on the mere ground of a misconstruction on his part of the terms of the contract of insurance.—*Condon v. Mutual Reserve Fund Life Ass'n*, 89 Md. 99, 42 Atl. 944, 44 L. R. A. 149, 73 Am. St. Rep. 169.

## VII. ASSIGNMENT OR OTHER TRANSFER OF POLICY.

### Cross-References.

- Assignment of claim to proceeds after loss, see post, § 594.
- Breach of condition against assignment, see post, § 343.
- Insurable interest to sustain assignment, see ante, §§ 121, 122.
- Of mutual benefit certificates, see post, §§ 728, 729.
- Right of assignee to proceeds, see post, §§ 593, 594.
- Agreement to marry as consideration for assignment, see "Contracts," § 53.
- Assignment in fraud of rights of insured's creditors, see "Fraudulent Conveyances," §§ 48, 51, 315.
- Carrier's liability for failure to transport insurance policy, see "Carriers," § 94.
- Effect of assignment by insured for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 180, 198.
- Effect of bankruptcy, see "Bankruptcy," §§ 143, 172, 299.
- Estoppel of beneficiary assigning policy to assert its invalidity, see "Estoppel," § 66.
- Estoppel of wife by assignment to husband, see "Husband and Wife," § 129.
- Evidence as to assignment as security, see "Assignments," § 88.
- Gift of policy, see "Gifts," §§ 10, 28.
- Interests in life policy passing to assignee in insolvency, see "Insolvency," § 55.
- Limitations against right to claim absolute assignment as security, see "Limitation of Actions," § 46.
- Pleading in action by assignee of insurance policy against assignor, see "Assignments," § 131.
- Presumption as to assignment of life policy, see "Assignments," § 134.
- Stamp tax on assignment, see "Internal Revenue," § 19.
- Testimony as to transactions with persons since deceased, relating to, see "Witnesses," § 164.

### § 199. Assignability of policies.

(a) A life insurance policy taken out expressly to reimburse a creditor may be assigned to such creditor, although in terms payable to assured's "legal representatives."—*Robinson v. Hurst*, 78 Md. 59, 26 Atl. 956. [Cited and annotated in 30 L. R. A. 610, as to who are "legal representatives" within life policies; in 53 L. R. A. 354, on moral obligation as consideration; in 63 L. R. A. 859, on conflict of laws as to insurance contracts.]

(b) An insurance policy is but a chose in action for the payment of money, and therefore assignable under act 1829, c. 51.—*New York Life Ins. Co. v. Flack*, 3 Md. 341, 56

Am. Dec. 742. (See Code, art. 8, § 1.) [Cited and annotated in 30 L. R. A. 610, as to who are "legal representatives" within life policies; in 55 L. R. A. 123, on false representations as to previous applications forfeiting life insurance.]

### § 200. What law governs.

#### Annotation.

Conflict of laws as to contracts of insurance.—63 L. R. A. 858; 23 L. R. A. (N. S.) 978, notes.

### §§ 201, 202. (See Analysis.)

### § 203. Right of insured to assign life or accident policies.

#### Cross-Reference.

Necessity of insurable interest to sustain assignment, see ante, § 121.

#### Annotation.

Power of insured to destroy rights of beneficiary.—49 L. R. A. 737, note.

(a) By the terms of a life insurance policy, the company agreed with the "assured, his executors, administrators, and assignees," to pay the amount of the policy to the "legal representatives" of the insured after due notice and proof of death; and at the end of the policy were these words: "N. B. If assigned, notice to be given the company." Held, that the provisions to pay to the "legal representatives" was designated to apply only to a case where the party died without having previously assigned, and was not to be construed as limiting in any sense the power of assignment.—*New York Life Ins. Co. v. Flack*, 3 Md. 341, 56 Am. Dec. 742. [Cited and annotated, see supra, § 199.]

### § 204. Right of beneficiary to assign life or accident policies.

#### Cross-Reference.

Necessity of insurable interest to sustain assignment, see ante, § 121.

(a) An assignment by a wife and her husband, for the benefit of his creditors, of a policy of insurance on his life, obtained for her sole and separate use, and made payable to her and her assigns, is valid.—*Emerick v. Coakley*, 35 Md. 188.

### §§ 205, 206. (See Analysis.)

### § 207. Consent of insurer.

#### Cross-Reference.

Consent to assignment as ground of estoppel or waiver, see post, § 393.

(a) A provision in an insurance policy that it cannot be assigned without the consent of

the insurer does not apply to a pledge of the policy.—*Dickey v. Pocomoke City Nat. Bank*, 89 Md. 280, 43 Atl. 33; *Second Nat. Bank v. Same*, Id. [Cited and annotated in 39 L. R. A. (N. S.) 890, on effect of surrender of pledge upon rights of pledgee.]

(b) The reasons which require the assent of the underwriters as indispensable to the validity of assignments of fire policies do not apply in cases of insurance on human life.—*New York Life Ins. Co. v. Flack*, 3 Md. 341, 56 Am. Dec. 742. [Cited and annotated, see supra, § 199.]

### § 208. Validity of oral assignment.

#### Cross-Reference.

As affected by statute of frauds, see "Frauds, Statute of," § 82.

### § 209. Form and requisites of assignment in writing.

#### Annotation.

Changing designation in benefit certificate otherwise than in prescribed method.—15 L. R. A. 350, note.

### § 210. Consideration for assignment.

### § 211. Delivery and acceptance of assignment.

(a) Evidence held sufficient to warrant the presumption of legal delivery of an assignment to insured's wife of the policy on his life, not negatived by it being found among his papers after his death, subsequent to hers.—*Shorey v. Webb*, 122 Md. 209, 89 Atl. 391.

(b) Delivery of the assignment of an insurance policy by the assignor to the attorney and representative of the assignee is sufficient delivery to vest the title in the assignee, and is good against all except the creditors of the assignor.—*New York Life Ins. Co. v. Flack*, 3 Md. 341, 56 Am. Dec. 742. [Cited and annotated, see supra, § 199.]

### § 212. Validity of assignment in general.

#### Annotation.

Validity of assignment of interest in life insurance policy to one paying premiums.—3 L. R. A. (N. S.) 935; 33 L. R. A. (N. S.) 949, notes.

(a) A life policy was issued for the benefit of a creditor of insured, and he assigned the policy to the creditor to more effectually carry out the intention of the parties. At the death of insured, he was indebted to the

creditor in pursuance of a line of credit given as a part of the consideration for the assignment. All of the premiums on the policy were paid by the creditor pursuant to the assignment. Held, that the policy was enforceable by the creditor whether the policy be deemed as having been originally issued to him or subsequently assigned to him.—*Fitzgerald v. Rawlings Implement Co.*, 114 Md. 470, 79 Atl. 915.

(b) A life policy is a chose in action for the payment of money and is assignable as such, and a bona fide assignment requiring the assignee to pay the premiums is valid.—*Fitzgerald v. Rawlings Implement Co.*, 114 Md. 470, 79 Atl. 915.

### § 213. Construction of assignment.

(a) W. loaned to D. the money with which to make the cash payment of premium on a policy of life insurance taken by D. for the benefit of his wife, taking as security for the repayment of the money an assignment of the policy from D. and the wife, giving them a receipt and defeasance reciting that the assignment should be "null and void upon the payment of said note at maturity, otherwise to continue for the sole use and benefit of A." Held, that the assignment was in effect a mortgage.—*Dungan v. Mutual Ben. Life Ins. Co.*, 46 Md. 469. [Cited and annotated in 3 L. R. A. (N. S.) 951, on validity of assignment of interest in life insurance to one paying premiums.]

(b) D. insured his life for the benefit of his wife and her assigns, and afterwards joined her in assigning the policy to W. to secure the payment of their joint note to him. W. gave a receipt in which it was expressed that the assignment should continue for his sole use if the note was not paid at maturity. The note was never paid. W. paid the annual premiums on the policy for some years, and then surrendered it to the insurance company. Held, in trover by D. and wife against the company for the conversion of the policy, that the assignment and receipt constituted, not a pledge, but a mortgage, and that the plaintiffs had consequently not sufficient title to maintain the action.—*Dungan v. Mutual Ben. Life Ins. Co.*, 38 Md. 242.

§§ 214, 215. (See Analysis.)

### § 216. Fraud in procuring transfer.

#### Cross-Reference.

Measure of damages for conversion of insurance policy, see "Trover and Conversion," § 50.

(a) A paid-up life insurance policy issued in favor of the wife of insured was assigned by a writing signed by insured to secure his debt, which referred to "my" policy, and purported to be also signed by the wife's mark, made in the presence of a witness to both signatures. For 23 years thereafter, and until the death of insured, the dividends were paid annually to the wife, and no claim was made by the assignee of the policy, or by his administrator after his death, until the present action to determine the ownership of the policy. The wife being barred from testifying, the only one who could testify as to her execution of the writing was the subscribing witness, who, on account of the long lapse of time, was unable to testify as to any of the circumstances. Held, that a showing that the wife could not read, in the absence of evidence that the writing was read or explained to her, together with the unsatisfactory evidence of the subscribing witness, rendered the evidence insufficient to show a valid assignment by her.—*Wienecke v. Arbin*, 88 Md. 182, 40 Atl. 709, 44 L. R. A. 142; *Weinecke v. Same*, Id.

### § 217. Notice to insurer.

#### Cross-Reference.

Assignment to donee without notice to company, see "Gifts," § 28.

(a) Where no particular time is specified within which notice of assignment is to be given to the company, two days from the assignment is sufficiently early, though the assured may have died in the meantime.—*New York Life Ins. Co. v. Flack*, 3 Md. 341, 56 Am. Dec. 742. [Cited and annotated, see supra, § 199.]

### § 218. Rights and liabilities of assignee.

#### Cross-References.

Effect of forfeiture of policy, see post, § 311.

Loans on policies, see ante, § 179½.

### § 219.— In general.

(a) Where a life policy was assigned by insured to a creditor in consideration of \$1 and the premiums due and to become due and

other valuable considerations expressed in the assignment and a line of credit to be given insured by the assignee, the provision in the assignment that it was agreed that the transfer was not made to secure any indebtedness or as collateral security simply meant that the assignee should hold the entire proceeds of the policy for his own use, and did not render the assignment void.—*Fitzgerald v. Rawlings Implement Co.*, 114 Md. 470, 79 Atl. 915.

(b) Where a fire insurance policy shows that the interest of the insured is that of mortgagee only, it is the duty of an assignee thereof to examine such mortgage, and trace the notes mentioned therein as thereby secured, and, on failure to do so, he cannot claim as a purchaser without notice, as against one to whom the insured's interest in the policy has passed by assignment of the notes and mortgage.—*Dickey v. Pocumoke City Nat. Bank*, 89 Md. 280, 43 Atl. 33; *Second Nat. Bank v. Same*, Id. [Cited and annotated in 39 L. R. A. (N. S.) 890, on effect of surrender of pledge upon rights of pledgee.]

(c) The assignee of a policy of insurance takes it subject to all the equities which attach to it in the hands of the insured; and on suit by the assignee the insurer has a right to claim any set-off or make any defense he could have made against the insured at the time of notice of assignment.—*Johnston v. Phoenix Ins. Co.*, 39 Md. 233.

(d) The possession of a policy of insurance, guarantying the payment of a note, is prima facie evidence of title.—*Ellicott v. United States Ins. Co.*, 8 G. & J. 166.

§§ 220, 221.—(See Analysis.)

### § 222.— Transfer as collateral security.

#### Cross-References.

Loans on policies, see ante, § 179½.

Bar of debt by limitation as affecting security, see "Limitation of Actions," § 167.

(a) One who holds fire insurance policies as pledgee has, though a provision requiring consent of the insurer to assignments was not complied with, such an equitable interest as, after loss, cannot be impugned in equity by one claiming by assignment from the insurer after the loss.—*Dickey v. Pocumoke City Nat. Bank*, 89 Md. 280, 43 Atl. 33; *Sec-*

*ond Nat. Bank v. Same, Id.* [Cited and annotated, see *supra*, § 219.]

(b) One who has taken an assignment of a life insurance policy as security for money loaned to the insured and the beneficiary, and in case of default of these parties in the payment of the premiums has kept the policy alive by paying the premiums himself, holds such policy subject to the right of redemption, provided the right is exercised within a reasonable time.—*Dungan v. Mutual Ben. Life Ins. Co.*, 46 Md. 469. [Cited and annotated in 3 L. R. A. (N. S.) 951, on validity of assignment of interest in life insurance to one paying premiums.]

(c) One who has taken an assignment of a life insurance policy as security for money loaned the beneficiary, and who, in case of default of the latter to pay premiums, has made such payments himself, can neither sell the policy nor surrender it to the company for its reserve or equitable value, without first giving notice to the beneficiary to redeem.—*Dungan v. Mutual Ben. Life Ins. Co.*, 46 Md. 469. [Cited and annotated, see *supra*.]

§§ 223-225. (See Analysis.)

### VIII. CANCELLATION, SURRENDER, ABANDONMENT, OR RESCISSION OF POLICY.

#### Cross-References.

Avoidance or forfeiture of policy for misrepresentation, fraud, or breach of warranty, covenant, or condition, see post, §§ 250-401.

Failure to cancel or rescind ground of estoppel or waiver, see post, § 390.

Of mutual benefit certificates, see post, § 730.

Surrender of life or accident policy, designating beneficiary and issue of new policy, affecting right to proceeds, see post, § 588.

Avoidance of policy by infant, see "Infants," § 58.

Decisions of state courts as to right to cancel policy after death of insured as authority in federal courts, see "Courts," § 372.

Surrender value as affecting right of trustee in bankruptcy in policy on life of bankrupt, see "Bankruptcy," § 143.

§§ 226, 227. (See Analysis.)

#### § 228. Right of insurer to cancel.

##### Annotation.

Right of insurer to cancellation of the policy in equity before loss, upon the ground that it was obtained by fraud.—45 L. R. A. (N. S.) 222, note.

#### § 229. Notice to cancel.

##### Annotation.

Necessity of giving mortgagee notice to cancel policy.—45 L. R. A. (N. S.) 463, note.

From what time does notice of cancellation of fire insurance become effective.—39 L. R. A. (N. S.) 829, note.

When insurance agent is agent of assured as to notice of cancellation.—20 L. R. A. 283, note.

(a) Where notice to the insured is a condition precedent to the cancellation of a fire policy, notice to the broker who effected the insurance is insufficient.—*National Union Fire Ins. Co. v. Baltimore Asbestos Co.*, 122 Md. 121, 89 Atl. 408.

(b) Notice of cancellation given only to the broker who effected the insurance is not ratified where the broker did not secure any substitute policies as was his custom, and the insured had no notice of the cancellation.—*National Union Fire Ins. Co. v. Baltimore Asbestos Co.*, 122 Md. 121, 89 Atl. 408.

(c) Where insurer mailed a notice of cancellation on July 15th, stating that the policy would be cancelled July 20th, but insured did not receive the notice until July 17th, a stipulation in the policy that it might be cancelled on five days notice was not complied with.—*German Union Fire Ins. Co. v. Fred G. Clarke Co.*, 116 Md. 622, 82 Atl. 974, 39 L. R. A. (N. S.) 829, Ann. Cas. 1913D, 488.

(d) Pursuant to a provision in a policy permitting it to be cancelled on five days notice to the insured, notice was sent on November 29th that the policy would be cancelled on December 6th, unless the premium was paid before that date, but the insurer did not receive such notice till December 25th. Held, that an attempted cancellation on the date fixed in the notice was ineffectual.—*American Fire Ins. Co. v. Brooks*, 83 Md. 22, 34 Atl. 373. [Cited and annotated in 50 L. R. A. (N. S.) 38, on sufficiency of notice of cancellation of fire policy; in 38 L. R. A. (N. S.) 617, 625, on insurance broker as agent for the insured; in 39 L. R. A. (N. S.) 830, on time from which notice of cancellation of fire insurance becomes effective.]

(e) Notice of cancellation of a policy for nonpayment of premium, sent to the insured by mail, is ineffectual unless received.—*American Fire Ins. Co. v. Brooks*, 83 Md. 22, 34 Atl. 373. [Cited and annotated, see *supra*.]

### § 230. Repayment of unearned premium on cancellation.

#### Annotation.

Return of premium as condition of cancellation by virtue of cancellation clause.—13 L. R. A. (N. S.) 884, note.

(a) A stipulation in a fire policy that it might be cancelled on return to the insured of the unearned premium makes a return or tender of the unearned premiums a condition precedent to cancellation.—*German Union Fire Ins. Co. v. Fred G. Clarke Co.*, 116 Md. 622, 82 Atl. 974, 39 L. R. A. (N. S.) 829, Ann. Cas. 1913D, 488.

### § 231. Delivery of policy for cancellation.

### § 232. Acts constituting cancellation.

#### Annotation.

Cancellation of insurance contract by return of policy.—13 L. R. A. (N. S.) 805, note.

### §§ 233-235. (See Analysis.)

### § 236. Operation and effect of cancellation.

#### Annotation.

Effect of cancellation of policy containing stipulation that it shall not become binding unless delivered to assured while in good health.—17 L. R. A. (N. S.) 1145, note.

### § 237. Remedies for wrongful cancellation.

#### Cross-Reference.

Recovery of premiums paid, see ante, § 198.

#### Annotation.

Measure of damages for wrongful cancellation of policy issued on assessment plan.—7 L. R. A. (N. S.) 1163, note.

### § 238. Right of insured to surrender in general.

#### Annotation.

Right to reject or rescind policy not conforming to representations of insurer's agent.—41 L. R. A. (N. S.) 1131, note.

(a) Where a person holding a policy for collateral security as mortgagee surrenders it to the company without notice to the insured to redeem, the company accepting the surrender acquires only the interest of mortgagee, and holds subject to the same right of redemption as the mortgagee held before the sale or surrender.—*Dungan v. Mutual Ben. Life Ins. Co.*, 46 Md. 469. [Cited and anno-

tated in 3 L. R. A. (N. S.) 951, on validity of assignment of interest in life insurance to one paying premiums.]

(b) Where a person holds a policy of insurance for collateral security as mortgagee, he cannot surrender such policy to the company for its reserved value, as a just mode of sale of foreclosure, without due notice to the insured to redeem.—*Dungan v. Mutual Ben. Life Ins. Co.*, 46 Md. 469. [Cited and annotated, see supra.]

### § 239. Right to surrender life or accident policies.

#### Cross-Reference.

Revocability of life policies, see ante, § 226; post, § 245.

#### Annotation.

Surrender of policy of ordinary life insurance without consent of beneficiary.—35 L. R. A. (N. S.) 844, note.

Right of guardian to surrender policy in favor of ward.—35 L. R. A. (N. S.) 1123, note.

Power of insured to destroy rights of beneficiary by surrendering policy.—49 L. R. A. 746, 751, note.

### §§ 240-243. (See Analysis.)

### § 244. Repayment and recovery of premiums or paid-up value on surrender.

#### Cross-References.

Executory agreements to insure, see ante, § 128.

Paid-up policy after default in payment of premiums, see post, §§ 363-370.

Removal of cause from state to federal court, see "Removal of Causes," § 75.

### § 245. Abandonment by insured or beneficiary.

(a) Where an insured, with knowledge of all the facts, voluntarily elected to discontinue the payment of assessments and dues and directed the company to cancel his policy, all of his rights and claims against the insurer thereunder ceased, and the policy became wholly void, and a plea in an action by the beneficiary on the policy alleging such facts was a complete bar to a declaration alleging breaches of the contract by insured and fraud in procuring the making of the contract of insurance.—*Price v. Mutual Reserve Life Ins. Co.*, 107 Md. 374, 68 Atl. 689.

(b) Where an insured, with knowledge of all the facts, refused to pay assessments then due to the insurance company, and directed the company to cancel the policy, in

consequence whereof the same was abandoned, the beneficiary named in the policy had no claim thereunder.—*Price v. Mutual Reserve Life Ins. Co.*, 102 Md. 683, 62 Atl. 1040, 4 L. R. A. (N. S.) 870. [Cited and annotated in 14 L. R. A. (N. S.) 1111, on remedy on insurer's repudiation of contract.]

§§ 246-248. (See Analysis.)

#### § 249. Actions for rescission.

##### *Cross-References.*

Recovery of unearned premium on cancellation, see ante, § 230.

Adequacy of legal remedy as affecting equity jurisdiction of United States courts, see "Courts," § 262.

Jurisdiction of federal courts, see "Courts," § 262.

### IX. AVOIDANCE OF POLICY FOR MISREPRESENTATION, FRAUD, OR BREACH OF WARRANTY OR CONDITION.

##### *Cross-References.*

Breach of promissory warranty or covenant or condition subsequent, see post, §§ 302-311.

Contract of reinsurance, see post, § 682.

Estoppel or waiver affecting right to avoid policy, see post, §§ 371-401.

Misrepresentation or fraud in application for mutual benefit insurance, see post, § 723.

Proof of misrepresentation or fraud, see post, § 655.

Proof of performance or breach of warranty or condition, see post, § 654.

Recovery of premiums paid on avoidance of policy, see ante, § 198.

Jurisdiction of federal court of equity to cancel insurance policy for fraud and misrepresentation notwithstanding state statute making fraud or misrepresentation question for jury, see "Courts," § 335.

Laws prohibiting forfeitures as class legislation, see "Constitutional Law," § 208.

Validity of warranties by infant, see "Infants," § 47.

#### (A) GROUNDS IN GENERAL.

#### § 250. Statutory provisions.

##### *Cross-References.*

Affecting representations as to other existing insurance, see post, § 301.

Affecting representations as to habits of person insured, see post, § 297.

Affecting representations as to health of insured, see post, § 291.

Affecting representations as to value, see post, § 281.

Affecting statements or conditions relating to incumbrances, see post, § 273.

(a) Code 1904, art. 23, § 196, declaring that, when the application for a policy contains a clause of warranty of the truth of

the answers therein, no misrepresentation made in good faith shall effect a forfeiture unless it relate to a matter material to the risk, abolishes the rule that a warranty is a part of the contract and that the materiality of a false statement therein will not be inquired into.—*Etna Life Ins. Co. v. Millar*, 113 Md. 686, 78 Atl. 483. (See Code 1911, art. 23, § 213.)

(b) Act 1894, p. 1059, c. 662 (Supp. Code 1888, art. 23, § 142a), provides that a breach of warranty in an application for insurance shall not effect a forfeiture unless it relates to some matter material to the risk. Act 1888, p. 688, c. 424, § 32 (Supp. Code 1888, art. 23, § 127), declares that any person or corporation, etc., engaging to pay money in the event of "sickness, accident, or death," etc., shall be a life insurance company, and shall be subject to all the requirements of law applicable to such companies. *Held*, that the act of 1894 was applicable to accident insurance.—*Maryland Casualty Co. v. Gehrman*, 96 Md. 634, 54 Atl. 678. (See Code 1911, art. 23, §§ 192, 213; *Id.* [vol. 3], art. 23, § 192.)

#### § 251. What law governs.

#### § 252. Representations.

##### *Cross-References.*

Distinction between warranties and representations, see post, § 265.

Representations as to particular facts, see post, §§ 272-301.

#### § 253.— In general.

(a) Where an insurance company, in acting upon the plaintiff's application for a policy of insurance, relied upon the representations which had been made on behalf of other parties in their application to a different company for insurance on the same property, and without the knowledge of the plaintiff or his agent, *held*, that the rights of the plaintiff under the policy were not affected thereby.—*Harmony Fire & Marine Ins. Co. v. Hazlehurst*, 30 Md. 380.

#### § 254.— Falsity.

(a) In order to defeat an action on a policy of life insurance on the ground that representations as to material points made by the assured at the time the policy was applied for were false, it is not necessary for the insurers to show that the representations were



moral falsehoods. It is sufficient to prove that they were, in point of fact, untrue.—*Mutual Ben. Life Ins. Co. v. Wise*, 34 Md. 582. [Cited and annotated in 55 L. R. A. 123, 124, 128, on false representations as to previous applications forfeiting life insurance.]

### § 255.—Materiality.

(a) Whether an alleged misrepresentation or concealment will avoid a policy depends on its materiality to the risk undertaken.—*British & Foreign Marine Ins. Co. v. Cummings*, 113 Md. 350, 76 Atl. 571.

(b) Where insured consulted two physicians other than the one named by him in his application as the physician last consulted, one of whom treated him for cirrhosis of the liver, which tends to weaken and destroy the physical condition and to predispose the person so afflicted to other diseases, and is conducive to rectal abscess, which deceased had, as well as to the pulmonary trouble, of which he died, and another of whom treated him for delirium tremens within five months before he made application; and insured drank intoxicants very much in excess of one glass of beer a day, as represented in his application, the misrepresentations were material to the risk, so as to avoid the policy; and, since insured must have known they were untrue, they will be held to have been made in bad faith.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. [Cited and annotated in 23 L. R. A. (N. S.) 973, 981, on conflict of laws as to insurance contracts.]

(c) In an action on a life insurance policy, where the company claimed that the policy was forfeited by material misrepresentations contained in the application, in determining the materiality of the answers, the consideration is not of what disease, if any, insured died, but the effect the answers might have had in inducing the company to issue the policy, and if any of the answers in the application materially affected the risk assumed by the company, and were untrue, the verdict should be for the company, regardless of the cause of deceased's death.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. [Cited and annotated, see supra.]

### § 256.—Effect of misrepresentation.

(a) An alleged misrepresentation made in an application for insurance is not a warranty, and, if proved to be untrue, does not avoid the policy, unless material to the risk assumed by the insurer.—*British & Foreign Marine Ins. Co. v. Cummings*, 113 Md. 350, 76 Atl. 571.

(b) At common law, and in the absence of statute, if answers in the application for a life insurance policy were representations, the policy was not avoided, unless the answers were false in relation to some matters material to the risk.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. (See Code, art. 23, § 213.) [Cited and annotated, see supra, § 255.]

(c) If a statement contained in the application for a life insurance policy is found to be untrue and material, the forfeiture of the policy will usually follow as of course, whether the answer be made in good faith or bad faith.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. [Cited and annotated, see supra, § 255.]

(d) A material misrepresentation made by an applicant for life insurance, in reliance on which a policy is issued, avoids the policy, though the applicant did not, at the time the representation was made, know that it was false.—*Bankers' Life Ins. Co. v. Miller*, 100 Md. 1, 59 Atl. 116.

### § 257. Concealment.

#### Cross-Reference.

Concealment of particular facts, see post, §§ 272-301.

### § 258.—In general.

(a) A general inquiry of the insured as to the condition of the vessel as to seaworthiness does not impose on him the necessity of stating all the facts which would be evidence in a trial of the question whether the vessel was seaworthy. Such facts must be inquired for specially in order to make their concealment avoid the policy.—*Augusta Ins. & Banking Co. v. Abbott*, 12 Md. 348. [Cited and annotated in 47 L. R. A. (N. S.) 197, on right to insurance taken out by carrier; in 13 L. R. A. (N. S.) 152, on right to insurance taken in agent's name.]

**§ 259.— Knowledge of facts by applicant or his agent.**

(a) Where the insured omitted to call at the post office, where a letter was received, upon the morning of the day in which insurance was effected, containing material information, it was held that such neglect, of itself, did not vitiate the policy.—*Neptune Ins. Co. v. Robinson*, 11 G. & J. 256. [Cited and annotated in 8 L. R. A. (N. S.) 985, on applicant's duty to notify of facts developing before delivery of policy.]

**§ 260.— Materiality.**

(a) The obligation of the insured to disclose facts on seeking insurance is limited to such facts as would vary the risk and nature of the contract, and no communication need be made of what is necessarily implied by the contract.—*Maryland Ins. Co. v. Bathurst*, 5 G. & J. 159.

**§ 261.— Effect.**

(a) Where a policy covers several buildings, a failure to disclose matters affecting the risk as to certain of the buildings will not avoid the policy as to other buildings.—*Bowman v. Franklin Fire Ins. Co.*, 40 Md. 620. [Cited and annotated in 19 L. R. A. 214, on severability of insurance in same policy.]

**§ 262. Fraud or false swearing in obtaining insurance.**

**§§ 263-268. Warranties.**

**Cross-Reference.**

Warranties as to particular facts, see post, §§ 272-301.

(a) At common law, and in the absence of statute, if answers in the application for a life insurance policy were warranties, the policy was avoided unless the answers were literally true, whether or not they related to matters material to the risk.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. (See Code, art. 23, § 213.) [Cited and annotated, see supra, § 256.]

(b) Act 1894, p. 1059, c. 662 (Code 1904, art. 23, § 196), providing that no untrue statement, made in good faith, contained in warranties in an application for a life insurance policy, shall effect a forfeiture or be a ground of defense to a suit on the policy, unless such misrepresentation relate to some matter material to the risk, is remedial in character, and should be given such liberal

and reasonable interpretation as will insure judicial investigation of the question whether any particular statement therein was untrue, and if so, whether it was material to the risk.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. (See Code 1911, art. 23, § 213.) [Cited and annotated, see supra, § 256.]

(c) A life insurance policy issued by a Pennsylvania company, according to the terms of which the application is made a part of the contract, and the insured agrees that every statement and answer contained therein is material, and warrants them "to be full, complete, and true," and further agrees that if any answer or statement, although made in good faith, is untrue, then the policy shall be null and void, notwithstanding any statute or law to the contrary, is invalid in so far as it conflicts with the Pennsylvania statute, which provides that no misrepresentation or untrue statement in an application for life insurance, made in good faith by the applicant, shall effect a forfeiture or be a ground of defense unless it relates to some matter material to the risk.—*Fidelity Mut. Life Ass'n v. Ficklin*, 74 Md. 172, 20 Atl. 680, 23 Atl. 197, 13 L. R. A. 584.

(d) Courts are not disposed to favor a warranty by construction, and, if the terms used are fully satisfied as a description, they will not be extended to include a warranty, unless it is clearly expressed that such was the design and meaning of the parties.—*United States Fire & Marine Ins. Co. v. Kimberly*, 34 Md. 224, 6 Am. Rep. 325. [Cited and annotated in 10 L. R. A. (N. S.) 743, on effect of temporary condition or increase of risk ceasing before loss; in 45 L. R. A. (N. S.) 124, 127, on change in use or condition of mill or factory as avoiding policy.]

**§§ 269, 270. Conditions precedent.**

**Cross-Reference.**

Forfeiture by breach of condition subsequent in general, see post, §§ 306-309.

**§ 271. Parties affected by avoidance of policy.**

**(B) MATTERS RELATING TO PROPERTY OR INTEREST INSURED.**

**Cross-Reference.**

Breach of promissory warranty or covenant or condition subsequent, see post, §§ 311-336.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

## § 272. Subjects of marine insurance in general.

### Cross-Reference.

Forfeiture for breach of promissory warranty or condition subsequent, see post, §§ 312, 313.

(a) A policy of insurance is not vitiated by the representation that the vessel was "about ready to sail," made October 28th, although she did not in fact sail till December 22d following.—*Augusta Ins. & Banking Co. v. Abbott*, 12 Md. 348. [Cited and annotated in 47 L. R. A. (N. S.) 197, on right to insurance taken out by carrier; in 13 L. R. A. (N. S.) 152, on right to insurance taken in agent's name.]

(b) An order for insurance against all risks, for account of whom it may concern, covers belligerent as well as neutral risks; and an indorsement thereon stating, "Although our advices give us no reason to believe that there will be any articles contraband of war on board, still, as we wish to be covered as against all possible risks, we request your reconsideration of the within, including articles contraband of war," does not alter the character of the original application, nor constitute a warranty or representation of neutrality.—*Maryland Ins. Co. v. Bathurst*, 5 G. & J. 159.

(c) Where an order for insurance is against all risks, for account of all whom it may concern, on a certain defined voyage, the insured is not bound to communicate or disclose at the time of effecting such insurance, without inquiry from the underwriter, the particular circumstances connected with the voyage which show that it is in fact a belligerent risk, as the transportation of hostile stores, troops, etc.—*Maryland Ins. Co. v. Bathurst*, 5 G. & J. 159.

(d) An application for insurance from A. to B., which stated that "said vessel will sail from A. in the course of this month," made by a merchant in Baltimore to a company there, was held merely a statement of the belief or opinion of the applicant that she would sail at the time mentioned.—*Allegre v. Maryland Ins. Co.*, 2 G. & J. 136, 20 Am. Dec. 424.

(e) In an action upon an open policy of insurance on a cargo, it appeared that the vessel and cargo had been condemned on account

of contraband trade, but that neither the insured nor insurer knew of the contraband articles being on board. There was no representation or warranty that either vessel or cargo was neutral. It appeared, also, that the interest of the insured greatly exceeded the amount insured. Held, that the plaintiff was entitled to recover.—*Baltimore Ins. Co. v. Taylor*, 3 H. & J. 198.

(f) A warranty that the property is the insured's is broken by his having concealed papers on board at the time of her capture, having practiced artifice to prevent their detection, and having used fictitious names for the purpose of such protection.—*Carrere v. Union Ins. Co.*, 3 H. & J. 324, 5 Am. Dec. 437.

## § 273. Seaworthiness of vessel.

### Cross-Reference.

Unseaworthiness cause of loss, see post, § 415.

(a) The representation that a vessel about to be insured is "a good old vessel" imports no more than that she is seaworthy, and adds nothing to the implied warranty of seaworthiness.—*Augusta Ins. & Banking Co. v. Abbott*, 12 Md. 348. [Cited and annotated in 47 L. R. A. (N. S.) 197, on right to insurance taken out by carrier; in 13 L. R. A. (N. S.) 152, on right to insurance taken in agent's name.]

(b) A statement upon information that the vessel to be insured had carried a cargo of coal on a previous voyage adds nothing to the implied warranty of seaworthiness for the voyage insured, and evidence that she was no longer fit for such a cargo does not tend to show a misrepresentation which would avoid the policy.—*Augusta Ins. & Banking Co. v. Abbott*, 12 Md. 348. [Cited and annotated, see supra.]

(c) In every insurance on ship, cargo, or freight, there is an implied warranty that the ship shall be seaworthy when the risk commences.—*Field v. Insurance Co. of North America*, 3 Md. 244.

## § 274. Description of building in general.

### Cross-References.

Construction of policy as to property covered, see ante, § 163.

Forfeiture for breach of promissory warranty or condition subsequent, see post, § 316.

**§ 275. Situation of building.****Annotation.**

Location of movable property.—26 L. R. A. 267, note.

**§ 276. Vicinity of other buildings.****Cross-Reference.**

Forfeiture for breach of promissory warranty or condition subsequent, see post, § 317.

**§ 277. Condition of building.****Cross-Reference.**

Forfeiture for breach of promissory warranty or condition subsequent, see post, § 318.

**§ 278. Use of building.****Cross-Reference.**

Forfeiture for breach of promissory warranty or condition subsequent, see post, §§ 319, 320.

**§ 279. Occupation of building.****Cross-References.**

Building becoming vacant, see post, § 323.  
Computation of time, see "Time," § 9.

**Annotation.**

Effect of sleeping on premises to prevent their becoming vacant or unoccupied within insurance policy.—40 L. R. A. (N. S.) 58, note.

**§ 280. Description and condition of goods.****Cross-References.**

Construction of policy as to property covered, see ante, §§ 165, 166.  
Removal of goods, see post, § 327.

**§ 281. Amount or value.****Cross-Reference.**

Depreciation in value, see post, § 325.

**§ 282. Title or interest of insured.****Cross-References.**

Change of title or interest, see post, § 328.  
Construction of policy as to property covered, see ante, § 164.  
Effect of written description of title on printed condition relating thereto, see ante, § 149.  
Persons affected by misrepresentation, breach of warranty, or condition, see ante, § 271.  
Reformation of policy as to description of title or interest, see ante, § 143.  
Right of insurer to attack title as fraudulent as to creditors, see "Fraudulent Conveyances," § 179.

**Annotation.**

Want of title to land where insured is sole and absolute owner of building.—38 L. R. A. (N. S.) 427, note.  
Effect of breach of policy of insurance by mortgagor on rights of mortgagee.—18 L. R. A. (N. S.) 197; 25 L. R. A. (N. S.) 1226, notes.

Vendee under executory contract as owner, where vendor holds legal title.—20 L. R. A. (N. S.) 775, note.

Mortgage as effecting change of title or interest in insured property.—38 L. R. A. 562, note.

(a) Where a fire insurance company attached an ordinary household furniture clause to a policy, there was no misrepresentation on the part of the insured, though he did not have articles mentioned in the clause, or, having them, had no insurable interest therein, for that clause is attached to such policies for the convenience of the insurer, regardless of whether the insured has all the articles enumerated.—*German Union Fire Ins. Co. v. Cohen*, 114 Md. 130, 78 Atl. 911.

(b) Where "wearing apparel of the family" is covered by a clause in a fire insurance policy issued to a husband, the insurer may not claim that he has no insurable interest in his wife's clothing.—*German Union Fire Ins. Co. v. Cohen*, 114 Md. 130, 78 Atl. 911.

(c) Where a fire policy on a bridge provided that it should be void if the interest of the insured in the property was not truly stated, the policy was not avoided by an undisclosed mortgage thereon.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 113 Md. 430, 77 Atl. 378.

(d) The interest of a purchaser at a sale on mortgage foreclosure is not, prior to final adjudication by the court, "unconditional and sole," within the requirement of an insurance policy.—*Hartford Fire Ins. Co. v. Keating*, 86 Md. 130, 38 Atl. 29, 63 Am. St. Rep. 499. [Cited and annotated in 13 L. R. A. (N. S.) 844, 866, on effect of nonwaiver agreement on conditions existing at inception of policy.]

(e) Where the assured warrants that he has not omitted to state any information material to the risk, and the policy declares that it shall be void unless consent is indorsed thereon in case the assured is not the sole and unconditional owner, or if his interest, whether as owner, trustee, agent, mortgagee, lessee, etc., or otherwise, is not truly stated, and the existence of a mortgage on the insured property is not disclosed, the insurance is void.—*Westchester Fire Ins. Co. v. Weaver*, 70 Md. 536, 17 Atl. 401, 18 Atl. 1034, 5 L. R. A. 478. [Cited and annotated

in 20 L. R. A. (N. S.) 779, on vendee under land contract as owner within meaning of insurance policy.]

(f) The insurance is void, where the assured holds personal property under a conditional sale, all the terms of which have not been complied with.—*Westchester Fire Ins. Co. v. Weaver*, 70 Md. 536, 17 Atl. 401, 18 Atl. 1034, 5 L. R. A. 478. [Cited and annotated, see supra.]

(g) The possession by lessees of insured property does not affect the insured lessor's right of property.—*Planters' Mut. Ins. Co. v. Rowland*, 66 Md. 236, 7 Atl. 257. [Cited and annotated in 45 L. R. A. (N. S.) 125, on change in use or condition of mill or factory as avoiding policy.]

(h) Where a fire insurance policy provides that, if the interest of the assured is other than entire, unconditional, and sole ownership, it must be so represented or the policy shall be void, and there was no representation that the interest of the assured was other than unqualified ownership, if a ground rent on the property in question was in equity a mortgage, it would not affect the provision of the policy so as to render it valid.—*Farmville Ins. & Banking Co. v. Butler*, 55 Md. 233. [Cited and annotated in 28 L. R. A. (N. S.) 836, on relief from mistake of law as to effect of instrument.]

(i) In an action to recover upon a policy of insurance, containing a condition that if the insured should not be the sole, absolute, and unconditional owner in fee simple of the land on which the building insured stood, and the fact not expressed in the policy, it should be void, it appeared that the legal title to the land when the policy issued was in the uncle of the plaintiff, and that a verbal gift to the latter had been made, and a promise of a deed in fee upon his request, and that the plaintiff had for several years treated the land in all respects as his own, and had waived a conveyance in fee before suit brought, but after the loss. Held, that the plaintiff could not recover.—*Wineland v. Security Ins. Co.*, 53 Md. 276. [Cited and annotated in 52 L. R. A. 331, on when insurable interest must exist under fire policies.]

(j) The existence of a lien on property is not a breach of a condition in a fire policy requiring "unconditional and sole owner-

ship" in the assured.—*Clay Fire & Marine Stock Ins. Co. v. Beck*, 43 Md. 358.

(k) Where a firm have no title or interest in the property at the time they apply to have it insured, but have only the temporary use of it, a policy insuring it as theirs is void, under the conditions that the interest of the insured must be truly stated in the policy.—*Citizens' Fire Ins. Co. v. Doll*, 35 Md. 89, 6 Am. Rep. 360.

(l) Where a mutual insurance company declares all premium notes to be liens on property insured to pay losses, a material misrepresentation or concealment as to title will vitiate the policy.—*Mutual Fire Ins. Co. v. Deale*, 18 Md. 26, 79 Am. Dec. 673. [Cited and annotated in 66 L. R. A. 659, 661, on husband's insurable interest in wife's property; in 69 L. R. A. 375, on effect of conveyance by husband to wife.]

(m) Under act 1842, c. 293, § 1, providing that a deed of real estate to a married woman vests her with a legal estate in fee, but not to her sole and separate use, the interest of the husband in land conveyed to his wife is in a contract of insurance properly described as his; and, if no inquiry is made, his omission to state his exact title will not vitiate the policy.—*Mutual Fire Ins. Co. v. Deale*, 18 Md. 26, 79 Am. Dec. 673. [Cited and annotated, see supra.]

(n) A condition in an insurance policy that it shall be void if the party insuring his buildings or goods "shall cause the same to be described in the policy otherwise than as they really are, so as the same be charged at a lower premium than is herein proposed," relates to a misdescription of the property, and not to the character of the title or interest in it.—*Franklin Fire Ins. Co. v. Coates*, 14 Md. 285. [Cited and annotated in 43 L. R. A. 664, on insurable interest in unfinished building under construction by contractor; in 52 L. R. A. 333, 335, on when insurable interest must exist under fire policies.]

### § 283. Incumbrances.

#### Cross-Reference.

Forfeiture of contract by breach of condition subsequent, see post, § 330.

(a) A false representation by the insured in his application for insurance that there is no lien on the property against the loss of which he wishes to be insured avoids a policy issued upon the application.—*Beck v. Hiber-*

*nia Ins. Co.*, 44 Md. 95. [Cited and annotated in 16 L. R. A. (N. S.) 1248, on parole evidence rule as to varying or contradicting written contracts, as affected by doctrine of waiver or estoppel of insurer.]

(b) Where a policy stipulated that any incumbrance on the property insured must be assented to by the company; otherwise, the policy should be void,—*held*, that the policy was avoided by the failure of the assured to inform the company of the existence of a judgment rendered against his grantor in the county wherein the insured property was located; and this, not only as to the buildings upon the land incumbered by the judgment lien, but also as to the machinery.—*Bowman v. Franklin Fire Ins. Co.*, 40 Md. 620. [Cited and annotated in 19 L. R. A. 214, on severability of insurance in same policy.]

§§ 284-287. (See Analysis.)

§ 288. Other insurance.

*Cross-References.*

Identity of property covered as determining what is double insurance, see post, § 504.

Persons affected by misrepresentation, breach of warranty or condition, see ante, § 271.

(a) A towing company insured a cargo of corn under a policy issued to it "on account of whom it may concern." The owner of the cargo also had it insured. *Held*, that in the absence of adoption by the owner of the towing company's insurance, or unless it was within the contemplation of the towing company that the owner should receive the insurance, the policy issued to such company did not inure to the benefit of the owner, so as to result in double insurance within a clause of the policy providing that, if the insured shall have any other insurance upon the property prior in date thereto, then the company shall be answerable only for the deficiency required to fully cover the property insured.—*Western Assur. Co. v. Chesapeake Lighterage & Towing Co.*, 105 Md. 232, 65 Atl. 637.

(b) A clause in an insurance policy permitting other insurances without notice to the company applies to prior as well as to subsequent insurances.—*Frederick County Mut. Fire Ins. Co. v. Deford*, 38 Md. 404.

(c) A fire insurance company was applied to for a policy of insurance, and for its own convenience, and not at the request of the person seeking the insurance, applied to another insurance company to share the risk. The secretaries of the two companies together examined the premises. Two policies, precisely similar, were drawn, and subsequently altered in the same particulars before the premiums were paid, which premiums were paid to both companies on the same day. *Held*, that one policy was neither prior nor subsequent to the other, and that the nonindorsement by the insurance company to whom application had been made, on the policy issued by such company, that another insurance had been effected, did not render such policy void under a condition therein that "if any other insurance has been or shall hereafter be made on the said property," unless the consent of the company in writing be indorsed thereon, such policy shall be void.—*Washington Fire Ins. Co. v. Davison*, 30 Md. 91. [Cited and annotated in 26 L. R. A. 289, on location of movable property as affecting fire insurance.]

(C) MATTERS RELATING TO PERSON INSURED.

§ 289. Description in general.

§ 290. Age.

§ 291. Health and physical condition.

*Cross-References.*

Condition as to delivery while insured is in good health, see ante, § 136.

Necessity of payment of premium while in good health, see ante, § 137.

*Annotation.*

Effect of honest mistake in answer as to health of insured, warranted by him to be true.—15 L. R. A. (N. S.) 1277, note.

Innocent misrepresentations as to health of insured when he has an undiscovered disease.—53 L. R. A. 193, note.

(a) If statements in insured's application and in his answers to the medical examiner that he was in good health were warranties, if untrue, the company could defeat recovery on the policy by showing that they were made in bad faith, or were material to the risk, though made in good faith.—*Mutual Life Ins. Co. v. Robinson*, 115 Md. 408, 80 Atl. 1085.

(b) If statements in insured's application as to the condition of his health were merely representations, but made material by agree-

ment of the parties, only their truth was open for consideration on the question of forfeiture.—*Mutual Life Ins. Co. v. Robinson*, 115 Md. 408, 80 Atl. 1085.

(c) The failure of an applicant for insurance to disclose temporary ailments not affecting his general health does not render his answers in the application untrue, and where an ear trouble was, as applicant supposed, merely temporary, and had entirely passed away, leaving his general health unimpaired, his failure to disclose his trouble was not a misrepresentation; but where the trouble was serious, and there was an infection which resulted in a disease, the answer was false and material.—*Ætna Life Ins. Co. v. Millar*, 113 Md. 686, 78 Atl. 483.

(d) The general rule is that a false statement in an application for life insurance policies as to whether the applicant has been consulted or been treated by a physician is material to the risk, except when the treatment is for a trivial ailment.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. [Cited and annotated in 23 L. R. A. (N. S.) 973, 981, on conflict of laws as to insurance contracts.]

(e) The representations in an application for life insurance as to the health of the applicant are not warranties of their truthfulness, where they are not made so in the application, and are not referred to in the policy issued thereon.—*Bankers' Life Ins. Co. v. Miller*, 100 Md. 1, 59 Atl. 116.

(f) It is not a breach of a warranty of physical soundness, in an application for accident insurance, that the applicant's leg is slightly curved, and therefore more susceptible to inflammation from future accidents than a normal leg would be.—*Maryland Casualty Co. v. Gehrman*, 96 Md. 634, 54 Atl. 678.

(g) Declarations made by an applicant for a policy of life insurance, in reply to questions put by the company as to his health, occupation, etc., are not warranties, but mere representations, made material by the contract. The only question, therefore, for the jury, in respect to such representations, is whether they were true or false.—*Mutual Ben. Life Ins. Co. v. Wise*, 34 Md. 582. [Cited and annotated in 55 L. R. A. 123, 124, 128, on false representations as to previous applications forfeiting life insurance.]

## § 292. Medical attendance.

### Annotation.

Time covered by question or representation as to consultation with physician.—45 L. R. A. (N. S.) 162, note.

What constitutes a consultation with, or attendance by, a physician, within the meaning of an application for life insurance.—18 L. R. A. (N. S.) 362, note.

(a) The mere fact that a physician had twice prescribed for the insured for indigestion shortly before the issuance of the policy is not sufficient to show bad faith on the part of the insured, who stated in his application for the policy that his usual medical attendant was the father of the physician who had so prescribed for him, that he had not consulted any other medical man for 10 years, and that he had had no attack of sickness for 18 years previously.—*Fidelity Mut. Life Ass'n v. Ficklin*, 74 Md. 172, 21 Atl. 680, 23 Atl. 197.

## §§ 293, 294. (See Analysis.)

## § 295. Residence.

### Cross-Reference.

Breach of promissory warranty or covenant or condition subsequent, see post, § 337.

## § 296. Occupation.

### Cross-References.

Change of occupation, see post, § 339.

Risks and causes of loss within policy, see post, § 453.

## § 297. Habits.

### Cross-Reference.

Change in habits, see post, § 341.

### Annotation.

Scope and effect of provisions in policies of insurance forbidding use of intoxicating liquor.—15 L. R. A. (N. S.) 206; 25 L. R. A. (N. S.) 1241, notes.

(a) Representations by an applicant for insurance that he did not use any malt liquors, wines, or spirits, and had never used malt or spirituous liquors to excess, are material to the risk as a matter of law.—*Forwood v. Prudential Ins. Co.*, 117 Md. 254, 83 Atl. 169.

## §§ 298, 299. (See Analysis.)

## § 300. Previous application for insurance.

### Annotation.

Character of insurance or company covered by question in application for life or accident insurance as to other insur-

ance or as to previous rejection of application.—32 L. R. A. (N. S.) 461, note. Previous rejection by benefit association as declination or refusal of insurance within meaning of application for life insurance.—4 L. R. A. (N. S.) 247, note.

False representations as to previous applications for insurance.—55 L. R. A. 122, note.

### § 301. Other existing insurance.

#### *Cross-Reference.*

See ante, § 288; post, § 342.

#### *Annotation.*

Void or inoperative policies of insurance as breach of a condition against additional or other insurance on property.—1 B. R. C. 39, note.

## X. FORFEITURE OF POLICY FOR BREACH OF PROMISSORY WARRANTY, COVENANT, OR CONDITION SUBSEQUENT.

#### *Cross-References.*

Contract of reinsurance, see post, § 682.  
Estoppel or waiver affecting right to forfeit policy, see post, §§ 371-401.  
Failure or delay to give notice or make proof of loss, see post, § 539.  
General rules of construction against forfeiture, see ante, § 146.  
Mutual benefit insurance, see post, § 744.  
Proof of performance or breach of warranty or condition, see post, § 654.  
Recovery of premiums paid on forfeiture of policy, see ante, § 198.  
Laws relating to forfeiture of policies as impairing their obligation, see "Constitutional Law," § 166.  
Subject and title of act relating to forfeiture of policy, see "Statutes," § 116.

### (A) GROUNDS IN GENERAL.

#### *Cross-References.*

Nonforfeitable or paid-up policy, see post, § 401.  
Particular warranties and conditions, see post, §§ 337-345.

### § 302. Statutory provisions.

#### *Cross-References.*

Affecting condition as to keeping prohibited articles, see post, § 326.  
Application to policy of fidelity insurance, see post, § 332.  
Relating to change in use of property insured, see post, § 319.  
Relating to vacancy of premises, see post, § 323.

### § 303. Continuing or promissory representations.

### § 304. Continuing or promissory warranties.

#### *Cross-Reference.*

Particular warranties, see post, §§ 311½-336.

(a) A written clause, in a policy of insurance upon a building, stating the location thereof, the materials of which it is built, and the purposes for which it is used, is mere description, constituting a warranty in præsenti, but not a continuing warranty.—*United States Fire & Marine Ins. Co. v. Kimberly*, 34 Md. 224, 6 Am. Rep. 325. [Cited and annotated in 10 L. R. A. (N. S.) 743, on effect of temporary condition or increase of risk ceasing before loss; in 45 L. R. A. (N. S.) 124, 127, on change in use or condition of mill or factory as avoiding policy.]

§ 305. (Omitted from the classification used herein.)

### §§ 306-309. Conditions subsequent.

#### *Cross-References.*

Construction against forfeiture, see ante, § 146.  
Particular condition, see post, §§ 311½-336.

(a) If a tenant violate the conditions of a policy of fire insurance, although without the knowledge of the owner, it is void.—*Howell v. Baltimore Equitable Soc.*, 16 Md. 377. [Cited and annotated in 12 L. R. A. (N. S.) 485, on effect on insurance of tenant's breach of condition.]

(b) Where a policy of insurance covered a stock of goods, and specified separate amounts on different portions of the stock, a breach of condition as to a part of the stock invalidates the whole policy.—*Associated Firemen's Ins. Co. v. Assum*, 5 Md. 165. [Cited and annotated in 19 L. R. A. 218, on severability of insurance in same policy.]

### § 310. Notice and proceedings to give effect to forfeiture.

#### *Cross-References.*

Mutual benefit insurance, see post, § 756.  
Retroactive effect of amendatory act as to forfeiture, see "Statutes," § 279.

(a) Resolutions passed by the board of directors of a mutual insurance company, suspending the policy of one using steam, in threshing, within 200 yards of the insured premises, do not affect a policy holder having no notice of their passage.—*Martin v. Mutual Fire Ins. Co.*, 45 Md. 51.



(b) A resolution passed by the board of directors of a mutual insurance company, suspending the policy for a breach of condition increasing the risk, does not affect a policy holder having no notice of its passage.—*Martin v. Mutual Fire Ins. Co.*, 45 Md. 51.

### § 311. Parties affected by forfeiture of policy.

#### Cross-Reference.

Parties affected by avoidance of policy, see ante, § 271.

### (B) MATTERS RELATING TO PROPERTY OR INTEREST INSURED.

#### Cross-Reference.

Increase of insurance risk as element of nuisance, see "Nuisance," § 4.

### § 311½. Statutory provisions.

### § 312. Subjects of marine insurance in general.

#### Cross-Reference.

Avoidance for misrepresentation, breach of warranty, or condition, see ante, § 272.

(a) A policy having attached upon the first sailing of a vessel, though afterwards she may have been rendered unseaworthy by being overloaded, the underwriters are not, for that reason, discharged from their liability for a loss which afterwards happened from the dangers of the seas, even if the alleged overloading could be considered as a remote cause of the loss.—*Merchants' Mut. Ins. Co. v. Butler*, 20 Md. 41.

(b) The insured is bound to furnish a master of competent skill and prudence.—*Riggin v. Patapsco Ins. Co.*, 7 H. & J. 279, 16 Am. Dec. 302.

### § 313. Sailing, voyage, and navigation of vessel.

#### Cross-Reference.

Avoidance of policy for misrepresentation or breach of warranty, see ante, § 272.

### § 314. Deviation or other change of voyage.

(a) A policy of insurance of a vessel described the voyage as "at and from Baltimore to New York via Chesapeake and Delaware Canal to Delaware Bay, and thence by sea to New York." After the return of the vessel in safety, an indorsement was made upon the same policy in these words: "It is

hereby understood that this policy shall cover \$2,500 on steamer E. J. D. from Baltimore to New York." A contract of insurance on the freight and cargo for the same voyage was made by the same company on "a voyage at and from Baltimore to New York." Held, that the indorsement on the policy made a new contract, which left the route to be pursued free, and that, therefore, there was no deviation in making the voyage by the outside course, instead of by the Chesapeake and Delaware Canal.—*Commonwealth Ins. Co. v. Cropper*, 21 Md. 311.

(b) A delay in sailing from the 19th of November to the 22d of December is such a deviation as will discharge an insurer of cargo put on board at the former date, "at and from" the port of departure, if the delay be unreasonable or unexcused; and it is not a sufficient excuse that the delay was caused by proceedings in the admiralty court against the vessel for debts due for repairs and supplies.—*Augusta Ins. & Banking Co. v. Abbott*, 12 Md. 348. [Cited and annotated in 47 L. R. A. (N. S.) 197, on right to insurance taken out by carrier; in 13 L. R. A. (N. S.) 152, on right to insurance taken in agent's name.]

(c) The mere apprehension of danger, not founded on reasonable evidence, will not authorize a deviation, but the danger must be imminent and obvious.—*Riggin v. Patapsco Ins. Co.*, 7 H. & J. 279, 16 Am. Dec. 303.

### § 315. Illegality of voyage.

### § 316. Buildings in general.

#### Cross-References.

See post, § 318.

Avoidance for misrepresentation, breach of warranty, or condition, see ante, § 274.

### § 317. Erection or occupation of neighboring buildings.

### § 318. Change in condition of building.

#### Cross-Reference.

Avoidance for misrepresentation, breach of warranty or condition, see ante, § 277.

#### Annotation.

Scope and effect of provision that the working of mechanics shall avoid policy.—44 L. R. A. (N. S.) 143, note.

(a) The placing and operating of an engine 50 feet from a tannery for the purpose of grinding bark is not an alteration of the

premises, within the terms of an insurance policy.—*Schaeffer v. Farmers' Mut. Fire Ins. Co.*, 80 Md. 563, 31 Atl. 317.

(b) A condition, technically styled "builder's risk," in a policy of insurance upon a building, that "the working of carpenters \* \* \* or other mechanics in building, altering, or repairing the premises named in the policy shall vitiate the same, unless permission for such work be indorsed thereon in writing," is only designed to prohibit such hazardous use of the building as arises from placing it in the possession or under the control of workmen for rebuilding, alteration, or repairs. Such a condition does not refer to the casual patching up of the building, or to such current repairs thereon as are indispensable to the proper conduct of the business carried on therein. And it makes no difference that carpenters and other workmen are constantly employed for that purpose as part of the regular force of the insured's employees.—*Franklin Fire Ins. Co. v. Chicago Ice Co.*, 36 Md. 102, 11 Am. Rep. 469. [Cited and annotated in 44 L. R. A. (N. S.) 149, 151, on provision that working of mechanics shall avoid insurance.]

(c) Though a policy requires permission for the employment of carpenters, roofers, etc., in repairing insured premises to be indorsed thereon, in order to prevent its forfeiture, such employment of workmen will not vitiate it, where from the character and structure of the building insured, and use made of it, it is necessary to employ workmen not alone to repair it, but keep it in condition for the business carried on there.—*Franklin Fire Ins. Co. v. Chicago Ice Co.*, 36 Md. 102, 11 Am. Rep. 469. [Cited and annotated, see supra.]

(d) The owner of an insured building has a right to make not only ordinary repairs, but such thorough repairs as will render the building tenantable, without forfeiting the policy, if the risk is not thereby increased.—*Jolly's Adm'r v. Baltimore Equitable Soc.*, 1 H. & G. 295.

(e) Alterations and additions to a building insured against fire do not per se change the risk, but it remains subject to the same perils, though their degree may be increased or diminished.—*Jolly's Adm'r v. Baltimore Equitable Soc.*, 1 H. & G. 295.

### § 319. Change in use of building.

#### Cross-References.

Avoidance for misrepresentation, breach of warranty or condition, see ante, § 278.

Cause of loss, see post, § 429.

#### Annotation.

Change in use or condition of mill or factory as avoiding policy.—45 L. R. A. (N. S.) 123, note.

Operating factory at night.—45 L. R. A. (N. S.) 126, note.

(a) In an action on a policy of fire insurance, where a provision in the policy forbids changes which would cause an increase in the risk without notice to the secretary of the company, evidence is admissible to show that it was a custom of such companies to charge a higher rate of premium on mills operated as plaintiff's was at the time of the fire, than on those operated as it was at the time of issuing the policy, in order to show that such a change was one within the contemplation of the parties at the time of making the provision.—*Planters' Mut. Ins. Co. v. Rowland*, 66 Md. 236, 7 Atl. 257. [Cited and annotated in 45 L. R. A. (N. S.) 125, on change in use or condition of mill or factory as avoiding policy.]

(b) A policy of insurance upon a building contained a stipulation that if the premises should be "appropriated or used" for carrying on the trade of a carpenter, etc., the policy should be of no force or effect, so long as any portion of the premises was so appropriated or used. While the policy was running, a box manufactory was established on the premises, but work therein had been temporarily suspended for some months before the building was destroyed by fire. In an action upon the policy, held, that the mere setting up of the machinery, etc., for the manufacture of boxes, was not such an "appropriation" of a part of the premises to carpenter's work as avoided the policy, and had no other effect than to suspend the policy while the factory was in actual operation.—*United States Fire & Marine Ins. Co. v. Kimberly*, 34 Md. 224, 6 Am. Rep. 325. [Cited and annotated in 10 L. R. A. (N. S.) 743, on effect of temporary condition or increase ceasing before loss; in 45 L. R. A. (N. S.) 124, 127, on change in use or condition of mill or factory as avoiding policy.]

(c) Where a fire policy contains a condition making it void if any unauthorized

hazardous trade increasing the risk is carried on in the building, the policy is avoided, though the trade was carried on by a tenant without the knowledge or consent of the insured.—*Howell v. Baltimore Equitable Soc.*, 16 Md. 377. [Cited and annotated in 12 L. R. A. (N. S.) 485, on effect on insurance of tenant's breach of condition.]

(d) Where a policy of insurance contains a condition making it void if any unauthorized hazardous trade, increasing the risk, is carried on in the building, the policy is avoided by the fact that such trade was carried on, no matter what was the cause or origin of the fire.—*Howell v. Baltimore Equitable Soc.*, 16 Md. 377. [Cited and annotated, see supra.]

### § 320. Illegal use of building.

#### Annotation.

Effect of unauthorized use of mill or factory which has been abandoned before loss.—45 L. R. A. (N. S.) 127, note.

Effect of unauthorized use of premises which ceased before loss under provision against such use.—10 L. R. A. (N. S.) 742, note.

§§ 321, 322. (See Analysis.)

### § 323. Building becoming vacant.

#### Cross-References.

Avoidance for misrepresentation, breach of warranty or condition, see ante, § 279.

Statutory provisions, see ante, § 311½.

#### Annotation.

Vacancy permit as waiver of previous vacancy.—47 L. R. A. (N. S.) 619, note.

Effect of temporary vacancy ceasing before loss under provisions against vacancy.—10 L. R. A. (N. S.) 740; 23 L. R. A. (N. S.) 593, notes.

(a) A fire policy provided that it should be void if the building described became vacant or unoccupied, and remained so for 10 days. Insured removed from her dwelling house to a city on June 18th with her family, and did not return until July 6th; the house being destroyed by fire in the meantime. All or a greater part of plaintiff's furniture was removed from the house, and she and her family resided in the city during such period, except her husband, who occasionally visited the place where the insured house was, and insured, when she returned to the neighborhood, did not occupy it, but lived with her mother. Held, that the policy was forfeited

under the provision against vacancy.—*Norris v. Connecticut Fire Ins. Co.*, 115 Md. 174, 80 Atl. 960.

(b) A dwelling house in which insured lived at the time the policy thereon was issued, on the removal of his family therefrom to a house near by, becomes "vacant and unoccupied," within the meaning of such words in the policy, avoiding it in such event, though the house is still slept in occasionally by the employees of insured, and visited by his wife daily, for the purpose of getting therefrom provisions stored therein.—*Agricultural Ins. Co. v. Hamilton*, 82 Md. 88, 33 Atl. 429, 30 L. R. A. 633. [Cited and annotated in 2 L. R. A. (N. S.) 519, as to when insured property is vacant or unoccupied; in 18 L. R. A. (N. S.) 200, on effect of breach of insurance policy by mortgagor on rights of mortgagee; in 51 L. R. A. (N. S.) 1058, on divisibility of insurance; in 40 L. R. A. (N. S.) 63, on sleeping on premises as preventing their becoming vacant or unoccupied within insurance policy.]

### § 324. Falling of building.

### § 325. Goods insured in general.

#### Cross-Reference.

Avoidance for misrepresentation, breach of warranty or condition, see ante, § 280.

### § 326. Keeping or use of prohibited articles.

#### Cross-Reference.

Effect of written provisions modifying printed clause prohibiting keeping and use of hazardous articles, see ante, § 149.

#### Annotation.

Effect of temporary keeping of prohibited articles on premises which ceased before loss under provision against keeping such articles.—10 L. R. A. (N. S.) 741; 48 L. R. A. (N. S.) 1222, notes.

(a) Where a policy provides for forfeiture in case the insured conceals any material fact, or if gasoline be used on the premises, the failure of the broker employed by the insured to procure the insurance to acquaint the insurer with the fact that gasoline is to be used will avoid the policy.—*Turnbull v. Home Fire Ins. Co.*, 83 Md. 312, 34 Atl. 875. [Cited and annotated in 38 L. R. A. (N. S.) 633, on insurance broker as agent for the insured.]

(b) A fire insurance policy on a specifically described steam flour mill and machinery prohibited the keeping of petroleum on "the

premises." The insured kept a barrel of petroleum in the engine house adjoining, but not included in the specific description of the premises. The fire originated in the main building. *Held*, that the petroleum was not on "the premises," and that the insured had a right to keep petroleum on the premises for the purpose of lubricating the insured machinery.—*Carlin v. Western Assur. Co.*, 57 Md. 515, 40 Am. Rep. 440.

(c) A fire insurance policy prohibited the use of camphene, spirit gas, burning fluid, or chemical oils, but permitted the use of refined coal oil, kerosene, or other carbon oil for lights, if drawn and the lamps filled by daylight. The insured used for lights lard oil and candles, filling the lamps at night. *Held*, no breach of condition.—*Carlin v. Western Assur. Co.*, 57 Md. 515, 40 Am. Rep. 440.

(d) By a policy of insurance the insured were not to keep in the buildings occupied by them any articles denominated hazardous, etc., except as provided in the policy or thereafter agreed to by the insurers. This agreement was subsequently modified by the following indorsement on the policy: "Permission given to keep one barrel of benzine or turpentine in tin cans," etc., "for use" on the premises. A barrel of benzine was brought in, and was being emptied into a large tin can, when it exploded, setting fire to the building, which was consumed. *Held*, that there was a substantial compliance with the terms of the indorsement in keeping the benzine in one tin can.—*Maryland Fire Ins. Co. v. Whiteford*, 31 Md. 219. [Cited and annotated in 10 L. R. A. (N. S.) 743, on effect of temporary condition or increase of risk ceasing before loss.]

(e) An agreement in a policy that insured was not to keep in the building any articles considered hazardous was modified by an indorsement on the policy as follows: "Permission given to keep one barrel of benzine or turpentine in tin cans \* \* \* for use on the premises,"—and one barrel of benzine was brought into the building, and exploded while being emptied into a large tin can, causing the building to be destroyed by fire. *Held*, that the temporary bringing in of the barrel of benzine was not a "keeping of benzine" in violation of the policy.—*Maryland*

*Fire Ins. Co. v. Whiteford*, 31 Md. 219. [Cited and annotated, see supra.]

### § 327. Removal of goods.

#### Annotation.

Temporary absence of insured property from location stated in the policy.—22 L. R. A. (N. S.) 848, note.

### § 328. Change of title or interest.

#### Cross-References.

Avoidance of policy for misrepresentation or breach of warranty or condition, see ante, § 282.

Effect of written description of interest covered on printed condition as to change of title or interest, see ante, § 149.

Parties affected by forfeiture, see ante, § 311.

#### Annotation.

Formation of partnership or change in personnel of firm as affecting a change of title or ownership.—21 L. R. A. (N. S.) 442, note.

Effect of transfer by one partner of his interest in insured property to other members of firm as a prohibited change or alienation of interest.—18 L. R. A. 482, note.

Contract to convey as breach of condition against change in title or interest.—3 L. R. A. (N. S.) 107, note.

(a) A fire policy stipulating that the insured shall state by what title he holds the land on which the building is erected is rendered void by the assured conveying the premises by a deed absolute in form, containing covenants of warranty, though the grantee on the same day agreed to resell the property to the assured on his paying a specified sum; the interest of the assured acquired by the agreement being a new interest, distinct from that possessed by him when the policy was issued.—*Bennett v. Mutual Fire Ins. Co.*, 100 Md. 337, 60 Atl. 99.

(b) A condition in a fire policy that it "shall cease from the time the property insured shall be levied on or taken into possession or control under any proceeding in law or equity, whether there be any change in possession or not," is not violated by the appointment of a receiver on the application of a mortgagee in a mortgage existing at the time the insurance was effected, and to whom the policy should be paid in case of a loss.—*Farmers' Fire Ins. Co. v. Baker*, 94 Md. 545, 51 Atl. 184. [Cited and annotated in 19 L. R. A. (N. S.) 643, on effect of appointment of receiver for insured on fire insurance.]

(c) A fire policy provided that it should be void if any change took place in the interest, title, or possession of the property, whether by legal process or by a voluntary act of the insured. *Held*, that his contract for the sale of the insured premises was a breach of the condition, and rendered the policy void.—*William Skinner & Sons Ship-Building & Dry-Dock Co. v. Houghton*, 92 Md. 68, 48 Atl. 85, 84 Am. St. Rep. 485. [Cited and annotated in 27 L. R. A. (N. S.) 233, as to who must bear loss from destruction or deterioration of realty before contract of sale completely performed by transfer of title.]

(d) An advertisement and sale of insured property under a power contained a mortgage is not a violation of a condition that the policy shall be void if the insured property is sold under a deed of trust, or any change is made in the title or possession of the property, since it is necessary for the sale under the power to be reported to court, and the same proceedings had as if the property had been sold by a trustee under a decree, and since, till such proceedings are had, the title of the assured has not come to an end.—*Hanover Fire Ins. Co. v. Brown*, 77 Md. 64, 25 Atl. 989, 27 Atl. 314, 39 Am. Rep. 386.

(e) An advertisement and sale of insured property under a power contained in a mortgage is not a violation of a policy of insurance which provides that it shall be void on the entry of a decree of foreclosure of the insured property, since, though the foreclosure sale be regarded as equivalent to a decree of sale by a court of equity, such decree does not pass title until ratified by the court.—*Hanover Fire Ins. Co. v. Brown*, 77 Md. 64, 25 Atl. 989, 27 Atl. 314, 39 Am. Rep. 386.

(f) In an action on an insurance policy containing a clause making the policy void, if, with the knowledge of the insured, foreclosure proceedings be commenced, or notice given of sale of any property covered by the policy, by virtue of any mortgage or deed of trust, the proceedings for sale under the power contained in a mortgage of the property showed such a notice of sale under a mortgage or deed of trust as was meant by this clause of forfeiture.—*Merchants' Ins. Co. v. Brown*, 77 Md. 79, 25 Atl. 992.

(g) A firm consisting of two members insured their stock against fire by a policy under seal, and subsequently introduced another member without changing the firm name. The policy did not contain a covenant for continuance or extension, but expressly declared that it should only continue for one year. Renewal premiums were paid by the firm, and renewal receipts taken therefor each year, until a fire occurred. *Held*, that, as the policy as a specialty did not admit of extension, the absence of notice to the company of the change in the firm did not affect the validity of the last of the renewal receipts, which would be regarded as constituting a distinct parol contract made with all of the partners, though referring to and incorporating the terms of the original policy.—*Firemen's Ins. Co. v. Floss*, 67 Md. 408, 10 Atl. 139, 1 Am. Rep. 398. [Cited and annotated in 21 L. R. A. (N. S.) 444, on formation of partnership or change in personnel of firm as affecting change of title or ownership within provision of policy.]

(h) A lease of insured property for five years, with a privilege to the lessees to buy at a named price any time during the term, is not a parting by the owner with his interest, where the lessees do not take up the privilege, and will not prevent an action by the lessor upon the policy of insurance.—*Planters' Mut. Ins. Co. v. Rowland*, 66 Md. 236, 7 Atl. 257. [Cited and annotated in 45 L. R. A. (N. S.) 125, on change in use or condition of mill or factory as avoiding policy.]

(i) A mere contract for the sale of the insured premises, without delivery of possession or execution of a deed therefor, with only a part of the purchase money paid, is not a sale within the meaning of the proviso in a policy that it shall be void if the property insured shall be sold or conveyed without the consent of the company in writing. To constitute a sale within the proviso, the right to the property and to the possession must pass from the vendor to the vendee.—*Washington Fire Ins. Co. v. Kelly*, 32 Md. 421, 3 Am. Rep. 149. [Cited and annotated in 52 L. R. A. 333, 335, on when insurable interest must exist under fire policies.]

#### § 329. Change of possession.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 330. Incumbrances.

#### Cross-References.

Avoidance of policy for misrepresentation, breach of warranty or condition, see ante, § 288.

Parties affected by forfeiture, see ante, § 311.

#### Annotation.

Effect of temporary encumbrances on property which were removed before loss under general provisions against encumbrances.—10 L. R. A. (N. S.) 739; 48 L. R. A. (N. S.) 1222, notes.

Effect of condition against encumbrances, upon renewal, substitution, or alteration of encumbrance upon insured property.—20 L. R. A. 400, note.

### § 331. Solvency of debtors.

(a) Where a member of a firm dies after the sale by it of goods on credit, but before the vendees fail in business, the business of such firm is not discontinued by, and on the date of, the death of such member, within the meaning of a condition in a credit insurance policy issued to such firm, providing that it shall be void in the event of discontinuance of business by the firm.—*American Credit Indemnity Co. v. Cassard*, 83 Md. 272, 34 Atl. 703.

### § 332. Fidelity of employees and others.

#### Cross-Reference.

Custom as to examination of employee's books and accounts, see "Customs and Usages," § 17.

### § 333. Special causes increasing risk.

(a) Where an insurance company expects to rely on a constant and ever ready water supply for the extinguishment of fires, it must clearly provide therefor in its policies.—*McEvoy v. Security Fire Ins. Co.*, 110 Md. 275, 73 Atl. 157, 22 L. R. A. (N. S.) 964. [Cited and annotated in 21 L. R. A. (N. S.) 104, on liability of insurer for fire caused by earthquake.]

(b) Defendant's policy, insuring plaintiff against fire on his office furniture and fixtures, contained a clause by which plaintiff agreed that, when defendant should pay a loss, plaintiff would subrogate defendant to all his rights to recover therefor from any other person or corporation. During the life of the policy the property insured, with much other property of plaintiff, was destroyed by fire, due to the neglect of a gas company. Plaintiff sued the gas company in tort, and by agreement between himself and

the gas company a verdict for plaintiff was given, plaintiff's loss on office furniture and fixtures being excluded from the consideration of the jury, though the same negligence and fire caused all the damage plaintiff had sustained. Judgment was entered on the verdict and paid. *Held*, that plaintiff could not recover on his policy from defendant, since there could be no further recovery against the gas company for their tort, and plaintiff, by settling with them, had destroyed the defendant's right of subrogation under the policy.—*Packham v. German Fire Ins. Co.*, 91 Md. 515, 46 Atl. 1066, 50 L. R. A. 828, 80 Am. St. Rep. 461. [Cited and annotated in 29 L. R. A. (N. S.) 701, as to effect of discharge of person primarily liable for loss, or of contractual provision giving him benefit of insurance, upon insured's right of action against insurer; in 41 L. R. A. (N. S.) 720, on right of insurer against insured who has received compensation from third persons responsible for loss.]

(c) Under a policy providing that if an engine be stationed on the premises the company shall appoint a committee to ascertain the amount of increased risk, and that the insured shall give an additional premium note therefor, where the risk is found by the committee to be increased by the use of an engine, and no additional note is given, and the engine occasions the loss, the company is not liable.—*Schaeffer v. Farmers' Mut. Fire Ins. Co.*, 80 Md. 563, 31 Atl. 317.

(d) A portable steam engine, employed at stated intervals in grinding bark for use in a tannery, is not a "steam engine temporarily employed for the purpose of threshing out crops of any kind," within the prohibition of an insurance policy on farm buildings and a tannery.—*Schaeffer v. Farmers' Mut. Fire Ins. Co.*, 80 Md. 563, 31 Atl. 317.

(e) Where the by-laws of a mutual fire insurance company provide that, if the property insured shall be rendered more hazardous by any means within or not within the control of the insured, notice shall be given to the secretary, etc., verbal notice to the general agent, its treasurer, and one of its directors, is sufficient.—*Planters' Mut. Ins. Co. v. Rowland*, 66 Md. 236, 7 Atl. 257. [Cited and annotated, see supra, § 328.]

### § 334. Precautions against loss.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 335. Keeping books, papers, and safe.

#### Annotation.

What books and inventories must be kept in a safe to comply with the requirements of the iron-safe clause.—15 L. R. A. (N. S.) 471, note.

Conditions in fire policy as to keeping, producing, and preserving books and papers.—51 L. R. A. 699, note.

Keeping books and vouchers in a safe, or safe place.—51 L. R. A. 709, note.

(a) Where a store containing insured's fixtures and stock was locked for a half hour at noon while the persons in charge were at lunch, and during that time the property was destroyed by fire, the store was not then "open for business," within a provision of the iron-safe clause in the policy, requiring that assured shall keep his books and inventory locked in a fireproof safe when the building is not actually open for business, or in some place not exposed to a fire which would destroy the building.—*Joffe & Mankowitz v. Niagara Fire Ins. Co.*, 116 Md. 155, 81 Atl. 281, 51 L. R. A. (N. S.) 1047, Ann. Cas. 1913C, 1217.

(b) Where a policy provided that the breach of the iron-safe clause should avoid the policy, a mere failure of assured to produce the books after the fire would not necessarily bar a recovery, if, in good faith, he placed the books in a safe which he believed to be fireproof, or in some place which he had a right to believe was not exposed to a fire which would destroy the building.—*Joffe & Mankowitz v. Niagara Fire Ins. Co.*, 116 Md. 155, 81 Atl. 281, 51 L. R. A. (N. S.) 1047, Ann. Cas. 1913C, 1217.

(c) A policy insuring a stock of goods, as well as fixtures, was entire and not divisible, so that, where insured was unable to enforce it as to the stock because of a violation of an iron-safe clause contained therein, he could not enforce it as to the fixtures.—*Joffe & Mankowitz v. Niagara Fire Ins. Co.*, 116 Md. 155, 81 Atl. 281, 51 L. R. A. (N. S.) 1047, Ann. Cas. 1913C, 1217.

(d) An iron-safe clause attached to an insurance policy required insured to take a complete inventory once each year, and that, unless one had been taken within 12 months prior to the date of the policy, an inventory should be taken within 30 days of the issuance of the policy, or it should be null and

void from date, etc. *Held*, that the clause was valid, and failure to comply with the provision rendered the policy void.—*Reynolds v. German American Ins. Co.*, 107 Md. 110, 68 Atl. 262.

(e) Where an iron-safe clause attached to an insurance policy required that an inventory be taken within 30 days from the date of the policy or the policy should be void and no inventory was taken until 14 days after the expiration of the period allowed, it was not a substantial compliance with the provision, and the policy was not enforceable.—*Reynolds v. German American Ins. Co.*, 107 Md. 110, 68 Atl. 262.

### § 336. Additional insurance.

#### Cross-References.

Effect of other insurance on extent of liability of insurer, see post, § 504.

Marine insurance, see ante, § 312.

Parties affected by forfeiture, see ante, § 311.

(a) In order to avoid a policy on the ground of a breach of the condition respecting subsequent insurance, it must appear that the policy creating such subsequent insurance was valid and enforceable.—*Sweeting v. Mutual Fire Ins. Co.*, 83 Md. 63, 34 Atl. 826, 32 L. R. A. 570.

(b) A lessor of a flour mill, who, while holding a policy of fire insurance on the machinery, leases the property, and receives from the lessees, who put in new machinery, a policy of insurance upon such machinery taken out by them, as collateral security for money loaned them by him, is not guilty of a breach of covenant against double insurance.—*Planters' Mut. Ins. Co. v. Rowland*, 66 Md. 236, 7 Atl. 257. [Cited and annotated in 45 L. R. A. (N. S.) 125, on change in use or condition of mill or factory as avoiding policy.]

(c) A fire insurance company was applied to for a policy of insurance, and for its own convenience, and not at the request of the person seeking the insurance, applied to another insurance company to share the risk. The secretaries of the two companies together examined the premises. Two policies, precisely similar, were drawn, and subsequently altered in the same particulars before the premiums were paid, which premiums were paid to both companies on the

same day. *Held*, that one policy was neither prior nor subsequent to the other, and that the nonindorsement by the insurance company to whom application had been made, on the policy issued by such company, that another insurance had been effected, did not render such policy void, under a condition therein that "if any other insurance has been or shall hereafter be made on the said property," unless the consent of the company in writing be indorsed thereon, such policy shall be void.—*Washington Fire Ins. Co. v. Davison*, 30 Md. 91. [Cited and annotated in 26 L. R. A. 239, on location of movable property as affecting fire insurance.]

(d) A policy of insurance "to the amount of \$1,000, say \$700 on stock of books and stationery, and \$300 on music, musical instruments, fancy goods, bronze powder, and medicines," contained a covenant that if the assured "shall hereafter make any other insurance on the hereby insured premises he shall, with all reasonable diligence, notify the same to this corporation," etc., "or in default thereof, this policy shall cease and be of no effect." *Held*, that the proper construction of the covenant was if any part of the goods embraced in either one of the contracts were insured in any other insurance office without notice the whole policy thereby became void.—*Associated Firemen's Ins. Co. v. Assum*, 5 Md. 165. [Cited and annotated in 19 L. R. A. 218, on severability of insurance in same policy.]

#### (C) MATTERS RELATING TO PERSON INSURED.

##### § 337. Change of residence.

###### *Cross-Reference.*

Avoidance of policy for misrepresentation, see ante, § 295.

##### § 338. Travel.

###### *Cross-Reference.*

Risks and causes of loss within policy, see post, § 452.

##### § 339. Change of occupation.

###### *Cross-Reference.*

Avoidance of policy for misrepresentation, see ante, § 296.

###### *Annotation.*

Temporary pursuit of other activities as change of occupation within meaning of accident insurance policy.—24 L. R. A. (N. S.) 1174, note.

##### § 340. Military or naval service.

##### § 341. Change in habits.

###### *Cross-Reference.*

Avoidance of policy for misrepresentation, see ante, § 297.

##### § 342. Additional insurance.

###### *Cross-Reference.*

Avoidance of policy for misrepresentation as to other existing insurance, see ante, § 301.

#### (D) ASSIGNMENT OF POLICY.

###### *Cross-References.*

Form, requisites, and validity of assignment, see ante, §§ 199-222.

Notice to receiver, see ante, § 217.

Right to assign, and validity and effect of assignment, see ante, § 199.

##### §§ 343, 344. (See Analysis.)

##### § 345. Necessity of consent of insurer.

###### *Cross-Reference.*

Consent requisite to validity of assignment, see ante, § 207.

##### §§ 346-348. (See Analysis.)

#### (E) NONPAYMENT OF PREMIUMS OR ASSESSMENTS.

###### *Cross-References.*

Mutual benefit insurance, see post, §§ 750-754.

Notice and proceedings to give effect to forfeiture, see ante, § 310.

Recovery of premiums paid on wrongful forfeiture, see ante, § 198.

##### § 349. Default as ground of forfeiture in general.

###### *Cross-References.*

Abandonment by insured, see ante, § 245.

Affecting right to loan on policy, see ante, § 179½.

Amount of premiums, see ante, § 183.

Nature of obligation to pay premiums, see ante, § 180.

Parties affected by forfeiture, see ante, § 311.

Persons liable for premiums, see ante, § 182.

Right of insurer to premiums, see ante, § 181.

Validity of by-law providing for forfeiture, see ante, § 54.

###### *Annotation.*

Effect of failure to pay periodical premium on policy of life insurance to terminate the same, in the absence of a provision for forfeiture.—26 L. R. A. (N. S.) 747, note.

(a) In contracts of life insurance, the time for the payment of interest on the premium notes is of the very essence of the contract, and must be strictly complied with; and if, by the terms of the policy, it is to become void upon a failure to pay such interest at



the time specified, equity will not relieve against the forfeiture.—*Knickerbocker Life Ins. Co. v. Dietz*, 52 Md. 16. [Cited and annotated in 15 L. R. A. 453, on paid-up and non-forfeiting policies.]

§§ 350, 351. (See Analysis.)

§§ 352-355. Notice of time for payment.

*Cross-Reference.*

Notice to give effect to forfeiture, see ante, § 310.

*Annotation.*

Necessity that notice of maturity of premiums or assessments sent through the mail be received.—1 L. R. A. (N. S.) 253, note.

(a) Under an insurance policy providing that, on default of the payment in advance of the annual interest on the premium notes before March 1st each year, the policy should be suspended and be no longer binding on the company, *held*, that the policy ceased to be binding on such default, though the company failed to give its customary notice as to the payment of the interest.—*Webb v. Mutual Fire Ins. Co.*, 63 Md. 213. [Cited and annotated in 20 L. R. A. (N. S.) 1039, on effect of custom of giving insured notice of maturity of premium.]

(b) A life insurance contract provided that the insured should pay "\$2.50 quarterly for expenses," among other things, and that he should forfeit his membership if the quarterly dues should not be paid within 30 days after notice. *Held*, that a notice to pay \$10, as annual dues, in advance, was not sufficient notice.—*Mutual End. Assess. Ass'n v. Essender*, 59 Md. 463.

(c) The charter and by-laws of a mutual company provided that the company should not pay any loss occurring while interest due from a member on a deposit note was unpaid. *Held*, that recovery could not be had on a policy where such interest was due, though plaintiff had not received the customary notice stating the amount of interest payable and the time when it was due; nothing in the charter or by-laws requiring the company to give such notice.—*Mutual Fire Ins. Co. v. Miller Lodge, I. O. O. F.*, 58 Md. 463. [Cited and annotated in 20 L. R. A. (N. S.) 1039, on effect of custom of giving insured notice of maturity of premium; in 23 L. R. A. (N. S.) 307, on debt from insurer to insured sufficient to pay premium or assessment as preventing forfeiture.]

§§ 356-358. (See Analysis.)

§§ 359-361. Sufficiency of payment or tender to prevent forfeiture.

(a) Profits accruing on the policy of a member of a mutual insurance company cannot be considered to pay interest due on deposit notes, so as to prevent a forfeiture of the policy; the by-laws providing that such profits could be calculated annually and credited to the member, but that dividends should be declared only every 10 years.—*Mutual Fire Ins. Co. v. Miller Lodge, I. O. O. F.*, 58 Md. 463. [Cited and annotated, see *supra*, §§ 352-355.]

§ 362. Excuses for nonpayment.

§§ 363-370. Rights of insured after default.

*Cross-References.*

Amount payable on paid-up policy, see post, § 517.

Concealment and misrepresentation in application for reinstatement, see ante, § 291.

Recovery of premiums or paid-up value on surrender of policy, see ante, § 244.

Testimony as to transactions with persons since deceased, see "Witnesses," § 154.

(a) A life policy stipulating that, if any premium due after the first two insurance years is not duly paid, the policy will become an automatically paid-up insurance, and allowing a grace of one month for the payment of all premiums, binds insured to pay the premiums at their maturity or within one month thereafter, or the policy becomes an automatically paid-up insurance, unless nonpayment of a premium is waived by insurer.—*Crook v. New York Life Ins. Co.*, 112 Md. 268, 75 Atl. 388.

(b) A life insurance policy gave a grace of one month in the payment of premiums, and provided that "if the policy, after being in force one full year, shall lapse for nonpayment of premium the company will continue in force the insurance under the policy for a period of sixty days from the date of the lapse." *Held*, that where the premium was due March 27th, but was not paid, the policy lapsed on April 27th, and the 60 days during which the policy was continued were computed from the latter date.—*Prudential Ins. Co. v. Devoe*, 98 Md. 584, 56 Atl. 809.

## **XI. ESTOPPEL, WAIVER, OR AGREEMENTS AFFECTING RIGHT TO AVOID OR FORFEIT POLICY.**

### **Cross-References.**

Estoppel or waiver as to adjustment of loss, see post, § 576.  
 Estoppel or waiver as to defects in or objections to mutual benefit insurance contract, see post, § 724.  
 Estoppel or waiver as to defects in or objections to policy, see ante, § 141.  
 Estoppel or waiver as to notice and proof of loss, see post, §§ 555-562.  
 Estoppel to deny agency, see ante, § 77.  
 Estoppel to deny insurable interest, see ante, § 117.  
 Mutual benefit insurance, see post, § 755.  
 Proof of estoppel or waiver, see post, § 664.  
 Refusal to adjust or arbitrate loss, see post, § 578.  
 Waiver of provisions of policy as to time to sue, see post, § 623.  
 Presumption as to knowledge of insured of contents of nonwaiver agreement, see "Contracts," § 99.

### **§ 371. Application of doctrines of estoppel and waiver.**

#### **Cross-Reference.**

Estoppel as to notice and proof of loss or defects therein or objections thereto, see post, § 556.

#### **Annotation.**

The parol-evidence rule as to varying or contradicting written contracts, as affected by the doctrine of waiver or estoppel as applied to policies of insurance.—16 L. R. A. (N. S.) 1165, note.

### **§§ 372, 373. (See Analysis.)**

### **§ 374. Powers of officers or agents respecting waiver.**

#### **Cross-Reference.**

Waiver of notice and proof of loss or of defects therein or objections thereto, see post, § 556.

### **§ 375.—In general.**

#### **Annotation.**

Waiver by officer of subordinate lodge of forfeiture for nonpayment of assessments.—4 L. R. A. (N. S.) 421; 38 L. R. A. (N. S.) 571, notes.

Power of agents to bind insurer by oral waiver or estoppel in pais as to forfeitures occurring after issuance of policy and before loss, under policies of insurance requiring consent or waiver to be in writing.—10 L. R. A. (N. S.) 1064, note.

(a) Where the authority of an agent of insurer does not extend to making a new contract of insurance, he cannot waive a forfeiture, and revive a contract that has ex-

pired for nonpayment of a premium; and the act of such agent in waiving the nonpayment of a premium is not binding on insurer unless it knew, or could have known, what was done, and adopted or ratified the act, or by its act or conduct estopped itself to insist on the consequences of nonpayment.—*Crook v. New York Life Ins. Co.*, 112 Md. 268, 75 Atl. 388.

### **§ 376.—Effect of provisions of policy.**

(a) A provision of an insurance policy prohibiting any agent from changing or modifying its terms does not apply to conditions which relate to the inception of the contract.—*Forwood v. Prudential Ins. Co.*, 117 Md. 254, 83 Atl. 169.

(b) A stipulation in a life policy that only the president, a vice-president, the actuary or secretary may modify the contract or extend the time for the payment of any premium, etc., is binding on insured and the beneficiary, and a cashier may not waive any provision of the policy unless authorized so to do by insurer, or unless a course of dealing leads insured to believe that the cashier has such authority.—*Crook v. New York Life Ins. Co.*, 112 Md. 268, 75 Atl. 388.

(c) Provisions in a fire policy limiting the power of agents to waive conditions and provisions of the policy do not refer to matters to be performed after a loss has occurred.—*Bakhaus v. Caledonian Ins. Co.*, 112 Md. 676, 77 Atl. 310.

(d) An insurance policy, providing that the agent was authorized to deal with any provision or condition which by its terms was required to be the subject of agreement indorsed thereon or added thereto, and also that additional insurance was required to be indorsed on the policy, but permitting \$1,500 other insurance, and containing the 80 per cent. clause, was issued to a policy holder who made no mention of prior insurance which he then had. Afterwards he returned the policy to the agent on the ground that he was dissatisfied with it, since he had prior insurance of more than \$1,500. The agent then changed the policy to read, "other insurance permitted," and struck out the 80 per cent. clause. *Held*, in an action on the policy, that the policy was a valid contract and properly admitted in evidence.—*Conti-*

*mental Ins. Co. v. Reynolds*, 107 Md. 96, 68 Atl. 277. [Cited and annotated in 16 L. R. A. (N. S.) 1226, on parol-evidence rule as to varying or contradicting written contracts, as affected by doctrine of waiver or estoppel of insurer.]

(e) The provision in an insurance policy that no agent has power to change it or waive any of its terms relates to the provisions of the contract itself after it has gone into effect, but does not apply to the conditions which relate to the inception of the contract, when the agent has delivered the policy and received the premiums with full knowledge of the actual situation.—*Dulany v. Fidelity & Casualty Co.*, 106 Md. 17, 66 Atl. 614. [Cited and annotated in 23 L. R. A. (N. S.) 359, on construction and effect of condition that assured must be confined to house.]

### § 377. Knowledge or notice of facts in general.

#### Cross-Reference.

See post, § 378.

#### Annotation.

Does failure of the insurer to speak or act after notice of breach of policy constitute a waiver thereof.—25 L. R. A. (N. S.) 1, note.

(a) Where a policy provides for forfeiture in case gasoline be used on the premises without a written permit indorsed on the policy, and requires a full disclosure by the insured of every material circumstance relating to the insurance, or the subject thereof, the fact that such policy is issued at a rate fixed on an adjoining building, belonging to the insured, by an association of which the insurer is a member, the rate for the adjoining building including a charge for gasoline, will not estop the insurer from claiming a forfeiture for a breach of the condition against the use of gasoline on the ground that it had constructive notice of such use, the insured not having informed it thereof.—*Turnbull v. Home Fire Ins. Co.*, 83 Md. 312, 34 Atl. 875. [Cited and annotated in 38 L. R. A. (N. S.) 633, on insurance broker as agent for the insured.]

(b) A demand for and an acceptance of premiums or assessments on a forfeited policy will not waive the forfeiture, where the insurer has no knowledge of the fact of a breach causing the forfeiture.—*Reynolds*

*v. Mutual Fire Ins. Co.*, 34 Md. 230, 6 Am. Rep. 337. [Cited and annotated in 15 L. R. A. (N. S.) 830, on effect of bankruptcy or insolvency proceedings, or assignment for creditors, on fire insurance.]

(c) On application by one for insurance on real estate which he describes as "his property," the company is not chargeable with notice of the state of the title as disclosed by the land records.—*Mutual Fire Ins. Co. v. Deale*, 18 Md. 26, 79 Am. Dec. 673. [Cited and annotated in 66 L. R. A. 659, 661, on husband's insurable interest in wife's property; in 69 L. R. A. 375, on effect of conveyance by husband to wife.]

(d) Mere awakening circumstances, inciting the underwriter to inquiry, are not sufficient to relieve the assured from the necessity of making known to the former the fact that the cargo for insurance consisted of live stock. A knowledge of this fact previous to the insurance must be shown in the underwriter, or an imputed knowledge, by proving that on the voyage insured live stock is the only article of commerce; and such imputed knowledge does not result from the introduction into the policy of the words "with liberty" of the port to which such exclusive trade is shown.—*Allegre v. Maryland Ins. Co.*, 8 G. & J. 190, 29 Am. Dec. 536.

(e) A policy of insurance was effected on the cargo of a vessel bound from B. to A., which vessel was captured, and the cargo lost to the insured. It was proved that the vessel cleared out from B. to C., and not to A., and when captured had a regular clearance for C., together with a bill of lading, invoice, manifest of cargo, and affidavit to prove the property thereof, annexed to the invoice, with a letter of instructions from the insured to the captain of the vessel, relative to the manifest of the cargo, passport, voyage, and sea letter therefor, in all of which the voyage was described as a voyage from B. to C. The evidence of the captain was that he sailed from B. to A., and with positive instructions from his owners to proceed to A., and he was going direct there when he was captured. Evidence was also offered by the assured that at the time of making the policy the fact that the vessel had cleared out for C., and had on board the said documents, was known to the insurers. *Held*,

that, if the vessel did in fact proceed on her voyage from B. to A., at the time mentioned, and if the fact that she cleared out for C., and had on board the said documents, was known to the assurers, then the documents could not in law affect the assured's right to recover.—*Baltimore Ins. Co. v. McFadon*, 4 H. & J. 31.

### § 378. Knowledge of or notice to officers or agents.

#### Cross-Reference.

See ante, § 377.

#### Annotation.

Effect of knowledge by insurer's agent of falsity of statements in application.—16 L. R. A. 33, note.

(a) Plaintiff in applying for a policy on a second-hand automobile in his application gave correctly the character and make, horse power, and manufacturer's number, stating that it was built in 1907 believing that fact to be true. Defendant's expert before issuing the policy from the information so given by comparison of the number with the manufacturer's catalogue could have ascertained the year in which the machine was built, and after loss it was ascertained that it was of "1906 model," whereupon defendant denied liability. *Held*, that, since defendant had in its possession evidence from which it could have ascertained before issuing the policy that the machine was of 1906 model, it was charged with notice thereof, and was estopped to assert such alleged misrepresentation in defense.—*British & Foreign Marine Ins. Co. v. Cummings*, 113 Md. 350, 76 Atl. 571.

(b) Notice to a general agent of an insurance company that the insured was using an engine on his premises was notice to the company, so as to require it to ascertain the increase of risk, as provided by the policy.—*Schaeffer v. Farmers' Mut. Fire Ins. Co.*, 80 Md. 563, 31 Atl. 317.

### § 379. Insertion of false answers in application by agent or under his direction.

(a) Where the application was annexed to policy, answers which applicant must have known to have been false *held* to defeat recovery, although true answers were given and different ones copied in the application

by the agent.—*Forwood v. Prudential Ins. Co.*, 117 Md. 254, 83 Atl. 169.

(b) The ignorance of assured, to be availing, must have been ignorance of the falsity of the answers written for him by the agent.—*Globe Reserve Mut. Life Ins. Co. v. Duffy*, 76 Md. 293, 25 Atl. 227. [Cited and annotated in 4 L. R. A. (N. S.) 610, on effect of agent's inserting false answers to questions correctly answered by applicant; in 14 L. R. A. (N. S.) 280, on bad faith of assured as affecting estoppel of insurer by agent's knowledge to set up falsity of answers in application; in 16 L. R. A. (N. S.) 1242, on parol-evidence rule as to varying or contradicting written contracts, as affected by doctrine of waiver or estoppel of insurer; in 41 L. R. A. (N. S.) 500, 514, 515, on medical examiner as agent of insurer or insured.]

(c) In an action against an insurance company on a life policy, it appeared that defendant's medical examiner wrote down the answers to the questions in the application, and that among such answers was a statement that assured had no pulmonary or kidney trouble. The application was signed by assured. The examiner testified to the truth of the answers. Defendant's evidence was that assured, when the application was made, had, and for some time had had, both pulmonary and kidney trouble, from which he died two months after the date of the policy. *Held*, it was error to charge that, if any of the answers in the application were written by defendant's agent, and were known to him to be untrue, then, if the jury believed assured was "an ignorant colored man," the untruth of such answers would not vitiate the policy, unless the agent and assured combined to defraud defendant.—*Globe Reserve Mut. Life Ins. Co. v. Duffy*, 76 Md. 293, 25 Atl. 227. [Cited and annotated, see supra.]

(d) A life insurance company cannot defeat a recovery on a policy which provides that it shall be void if the application contains any untrue statement, when it appears that its own agent placed the age of the insured, who was unable to read or write and did not know his own age, at less than it really was, stating at the time that he would make the insured out younger than he was.—*Keystone Mut. Ben. Ass'n v. Jones*, 72 Md. 363, 20 Atl. 195. [Cited and annotated in 16 L. R. A. 38, on effect of agent's knowledge of falsity of statements in application; in 16

L. R. A. (N. S.) 1248, on parol-evidence rule as to varying or contradicting written contracts, as affected by doctrine of waiver or estoppel of insurer.]

### § 380. Fraudulent or collusive acts of agent.

### §§ 381-387. Form and requisites of express waiver.

#### Cross-Reference.

Right to waive conditions as to mode of waiver, see ante, § 372.

(a) Where a fire insurance policy contains no provision authorizing the indorsement thereon of permission to remove the property from the buildings in which it was situated at the time the policy was issued, an indorsement not under seal, made by the secretary of the company, granting such permission, constitutes a new and distinct contract upon which an action of covenant will not lie.—*Shrtzer v. Mutual Fire Ins. Co.*, 46 Md. 506. [Cited and annotated in 28 L. R. A. 243, on location of movable property as affecting fire insurance.]

(b) In an action on a fire policy issued on a stock of goods, it appeared that plaintiff went to the company's office, and there saw the president, and notified him that he desired to move the goods into another building adjoining and of the same character as the one in which they were when insured, and desired to know if there was any objection to his doing so; that the president then asked him if he had his policy with him, to which he replied he had not; that the president then said it was no matter, he could fix it all right; that plaintiff understood him to say it was not necessary for him to bring the policy; and that plaintiff moved the goods before the loss. *Held*, that the company was estopped by the president's acts from setting up as a defense the fact of the removal of the goods, on the ground that the consent to such removal was not indorsed on the policy, as required by a provision that anything less than a distinct agreement indorsed on the policy should not be construed as a waiver of any written or printed condition, restriction, or stipulation therein contained.—*Maryland Fire Ins. Co. v. Gusdorf*, 43 Md. 506. [Cited and annotated in 26 L. R. A. 242, on location of movable property as affecting fire insurance.]

(c) Where the fact of a prior insurance was notified to the company at the time the policy was issued, the want of the indorsement of such prior insurance on the policy cannot be urged in a court of equity, in a cause otherwise free from objection, whatever effect it may have at law.—*National Fire Ins. Co. v. Crane*, 16 Md. 260, 77 Am. Dec. 289. [Cited and annotated in 28 L. R. A. (N. S.) 832, 917, 918, 919, on relief from mistake of law as to effect of instrument.]

(d) Since the indorsement of a prior insurance on the policy could only have been made by the company, if omitted, the assured is not at fault if he has notified the company of the existence of such prior insurance.—*National Fire Ins. Co. v. Crane*, 16 Md. 260, 77 Am. Dec. 289. [Cited and annotated, see supra.]

### § 388. Implied waiver in general.

#### Cross-Reference.

Defense of suicide, see post, § 443.

(a) Where an insurer does that which is inconsistent with an intention to insist on a strict compliance with the conditions precedent of the contract, it will be treated to have waived their performance.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 113 Md. 430, 77 Atl. 378.

(b) To establish a waiver of the nonpayment of a premium, insured must prove acts, declarations, or conduct of insurer inconsistent with the intention to insist on a performance of the conditions of the policy.—*Crook v. New York Life Ins. Co.*, 112 Md. 268, 75 Atl. 388.

(c) Where a bond given by an insurer of the fidelity of an employee provided "that it is essential to the validity of this bond that the employee's signature be hereunto subscribed and witnessed," and at the foot of the bond there was a place indicated for the signature of the employee, but it was never signed by him, the bond was invalid notwithstanding subsequent renewals by renewal receipts explicitly declared to be subject to all the covenants and conditions contained in the original bond.—*Union Cent. Life Ins. Co. v. United States Fidelity & Guaranty Co.*, 99 Md. 423, 58 Atl. 437, 105 Am. St. Rep. 313. [Cited and annotated in 33 L. R. A. (N. S.) 517, on character of, and rules governing, contracts by fidelity and guaranty companies.]

(d) When the risk is increased by the use of an engine, of which the company had notice, and no additional note is given solely because of the company's failure to ascertain the amount of the increased risk, the company is liable for a loss occasioned by the use of the engine.—*Schaeffer v. Farmers' Mut. Fire Ins. Co.*, 80 Md. 563, 31 Atl. 317.

(e) An insurance company cannot set up a forfeiture for a condition broken, against one whom its conduct has induced to believe that such provision would not be insisted upon.—*Globe Reserve Mut. Life Ins. Co. v. Duffy*, 76 Md. 293, 25 Atl. 227. [Cited and annotated, see supra, § 379.]

### § 389. Issuance and delivery of policy without objection.

#### Annotation.

Waiver of stipulation in policy that it shall not become binding unless delivered to assured while in good health.—17 L. R. A. (N. S.) 1149; 43 L. R. A. (N. S.) 727, notes.

Effect of nonwaiver agreement on conditions existing at inception of insurance policy.—13 L. R. A. (N. S.) 826, note.

(a) The buildings insured not having been completed when the fire policy issued and the fire occurred, and being therefore unoccupied, an agreement annexed to the policy, giving permission to make completions, waived, till the buildings were completed, the provisions of the policy and warranty requiring the buildings to be occupied.—*Bakhaus v. Caledonian Ins. Co.*, 112 Md. 676, 77 Atl. 310.

(b) Where a general agent at the time of issuing a policy knew the facts as to the interest of insured, the company will be estopped to rely on them as a forfeiture, notwithstanding the provisions of the policy that insured's interest shall be unconditional and sole, and that "no \* \* \* representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be indorsed hereon or added hereto."—*Hartford Fire Ins. Co. v. Keating*, 86 Md. 130, 38 Atl. 29, 63 Am. St. Rep. 499. [Cited and annotated in 13 L. R. A. (N. S.) 844, 866, on effect of nonwaiver agreement on conditions existing at inception of policy.]

### § 390. Failure to assert forfeiture or to cancel or rescind policy.

(a) Where a fire policy provides for the ascertainment of the increase of risk due to the location of any engine on the premises, and requires the insured to pay additional premium for any increase of risk found, the location of an engine on the premises the day before a loss will not prevent recovery, where the insured, 10 days prior to its occurrence, notified the company that he frequently used an engine on his premises, and offered to pay the additional premiums, but the company failed to act on the notice.—*Farmers' Mut. Fire Ins. Co. v. Schaeffer*, 82 Md. 377, 33 Atl. 728. [Cited and annotated in 25 L. R. A. (N. S.) 13, on failure of insurer to speak or act after notice of breach of policy as waiver.]

### § 391. Admission of liability on policy.

### § 392. Demand, acceptance, or retention of premiums or assessments.

(a) Where insurer in a life policy stipulating that insured may be reinstated within a specified time after the nonpayment of a premium on his written application with evidence of insurability satisfactory to insurer, and the payment of the premiums due, received and retained a check for a past-due premium to await the medical certificate of insured, it did not waive nonpayment of the premium, though insured did not receive some of the communications of the agent of insurer, and though he was sick at the time, and could not furnish the health certificate demanded.—*Crook v. New York Life Ins. Co.*, 112 Md. 268, 75 Atl. 388.

(b) Where a life policy provided that it should be void in case a policy issued by insurer on the same life should be in force, and the company received premiums for a number of years on the policy in question, it was estopped to deny its validity because of the fact that there was a previous policy in force, though, owing to the insurer's system of bookkeeping, it did not know as a matter of fact of the existence of the previous policy.—*Monahan v. Mutual Life Ins. Co.*, 103 Md. 145, 63 Atl. 211, 5 L. R. A. (N. S.) 759.

(c) Where an insurer in a life policy became by the acceptance of premiums estopped to assert a forfeiture, the tender by the insurer of all the premiums after the

death of insured was insufficient to relieve it from the estoppel.—*Monahan v. Mutual Life Ins. Co.*, 103 Md. 145, 63 Atl. 211, 5 L. R. A. (N. S.) 759.

(d) An industrial life policy provided that a default of four weekly premium payments should forfeit the policy, and that a policy so forfeited could only be reinstated by the assured passing a satisfactory medical examination. A policy holder made such default, and an inspector sent out by the company to collect delinquent premiums stated to insured, on payment by the latter of the delinquent premiums, that the policy was all right. *Held*, to constitute a waiver of the forfeiture.—*Baltimore Life Ins. Co. v. Howard*, 95 Md. 244, 52 Atl. 397.

(e) The mere fact that officers of an industrial life company receiving payments of premiums after a forfeiture for nonpayment should know, in the performance of their duties, of such forfeiture, is sufficient, as knowledge thereof, to enable the insured to show a waiver of the forfeiture.—*Baltimore Life Ins. Co. v. Howard*, 95 Md. 244, 52 Atl. 397.

(f) Defendant insured plaintiff's property from July 27, 1894, to March 1, 1902, for which plaintiff gave his premium note, interest payable annually before March 1st each year, default thereof to render void the company's liability on the policy until the interest was paid. The interest was paid to March 1, 1895; and August 1, 1896, disregarding back interest, plaintiff paid its agent, and he accepted, six dollars to renew the policy from then until January 1, 1897, defendant's charter having been amended to make interest or premium payable January 1st instead of March 1st. This the agent remitted as money paid on plaintiff's insurance account, and defendant kept it without inquiry. His property was destroyed November 6, 1896, and defendant, being apprised of the loss, offered to return plaintiff his money, which he refused. Prior thereto it had written the word "Canceled" on an office copy of the policy, but without notifying plaintiff or returning his note, as the policy required. *Held*, that defendant was liable, notwithstanding its agent may have been unauthorized to accept less than the amount of in-

terest due in renewal of the policy.—*Mutual Fire Ins. Co. v. Eicholtz*, 88 Md. 92, 40 Atl. 706.

(g) In an action on three insurance policies, it appeared that plaintiff was insured's sister; that he died unmarried, and left neither father, brother, nor sister surviving him, except plaintiff; that she had paid all premiums on the first policy from the death of her father, who was the beneficiary therein; that, when the second and third policies on her brother's life were applied for, she gave the first policy to defendant's agents, who subsequently returned it to her indorsed, "Additional insurance allowed on the within life"; that after her father's death she was urged by defendant's agents to take out additional insurance, and took out the second and third policies, and paid the premiums on all the policies till insured died, and that the agents of defendant knew of her father's death at the time she paid the premiums. *Held*, that she was entitled to recover on the first as well as on the other two policies.—*Metropolitan Life Ins. Co. v. Anderson*, 79 Md. 375, 29 Atl. 606.

(h) The levy and collection of an assessment by a mutual fire insurance company on the premium note of a member after the forfeiture of his policy, and knowledge of such forfeiture by the company, does not constitute a waiver thereof, where such assessment is made to pay losses occurring prior thereto.—*Farmers' Mut. Fire Ins. Co. v. Hull*, 77 Md. 498, 27 Atl. 169.

(i) The fact that an assessment realized more than enough to pay losses is insufficient evidence of an intention to waive a forfeiture, where it appears that, from the beginning of the investigation of the loss under such member's policy, the company denied all liability, because of such forfeiture.—*Farmers' Mut. Fire Ins. Co. v. Hull*, 77 Md. 498, 27 Atl. 169.

(j) The receipt by a mutual insurance company of interest on a premium note after the assured has been discharged under the insolvent laws from all liability on the note does not estop the company from denying the validity of the contract of insurance, if they had no actual notice of the proceedings in insolvency and the discharge of the assured

until after the last payment of interest.—*Reynolds v. Mutual Fire Ins. Co.*, 34 Md. 280, 6 Am. Rep. 337. [Cited and annotated in 15 L. R. A. (N. S.) 830, on effect of bankruptcy or insolvency proceedings, or assignment for creditors, on fire insurance.]

(k) An insured gave to the insurer a premium note. Subsequently the insured obtained his discharge under the insolvent laws, but the interest on the premium note was paid until several months before the building was destroyed by fire. Held, that, in an action by the insured to recover on the policy, the insurer was not estopped from denying the validity of the contract of insurance by the receipt of interest on the premium note after the application of the insured for the benefit of the insolvent laws; the insurer having had no actual notice of the proceedings in insolvency and the discharge of the insured, until after the last payment of the interest.—*Reynolds v. Mutual Fire Ins. Co.*, 34 Md. 280, 6 Am. Rep. 337. [Cited and annotated, see supra.]

### § 393. Consent to assignment of policy.

#### Cross-Reference.

Consent requisite to validity of assignment, see ante, § 207.

(a) Where a policy is void in the hands of the person insured, the consent of the company to an assignment will not render it valid in the hands of the assignee.—*Citizens' Fire Ins., S. & L. Co. v. Doll*, 35 Md. 89, 6 Am. Rep. 360.

### §§ 394-398. (See Analysis.)

### § 399. Payment of loss.

(a) Where the insurer interpleads, and pays the money into court, it cannot be afterwards asserted that an assignment of the policy was a wager transaction.—*Clogg v. MacDaniel*, 89 Md. 416, 43 Atl. 795. [Cited and annotated in 3 L. R. A. (N. S.) 937, on validity of assignment of interest in life insurance to one paying premiums.]

### § 400. Provisions of policy against forfeiture.

#### Cross-References.

Invalidity for want of insurable interest, see ante, § 120.  
Statutory provisions as to incontestability, see ante, § 250.

### § 401. Status of nonforfeitable or paid-up policy.

#### Cross-References.

Amount payable on incontestable or paid-up policy, see post, § 517.  
Death by suicide, see post, § 445.  
Death caused by violation of law, see post, § 443.

## XII. RISKS AND CAUSES OF LOSS.

#### Cross-References.

Commencement, term, and duration of risk, see ante, §§ 175, 177, 178.  
Mutual benefit insurance, see post, §§ 787, 788.  
On reinsurance, see post, § 683.  
Proof as to risk and cause of loss, see post, §§ 657-659.  
Increase of insurance risk as element of nuisance, see "Nuisance," § 4.

### (A) MARINE INSURANCE.

#### Cross-References.

Avoidance of policy for misrepresentation, fraud, or breach of warranty or condition, see ante, §§ 272, 273.  
Extent of loss, see post, § 468.  
Forfeiture of policy for breach of promissory warranty, covenant or condition subsequent, see ante, §§ 312-314.  
Term and duration of risk, see ante, § 178.

### § 402. Marine risks in general.

#### Annotation.

Waters covered by description of waters in policy of marine insurance.—L. R. A. 1915C, 408, note.  
Effect of voluntary exposure to peril upon liability on marine insurance policy.—1 L. R. A. (N. S.) 1095, note.

### §§ 403, 404. (See Analysis.)

### § 405. Fire.

(a) A policy of insurance on a steam tug against "all loss or injury by fire" will not cover damage done to the interior of the boiler by the fires in the furnace on account of the failure to keep a sufficient supply of water in the boiler.—*American Towing Co. v. German Fire Insurance Co.*, 74 Md. 25, 21 Atl. 553. [Cited and annotated in 25 L. R. A. (N. S.) 503, on fire insurance as covering loss caused by excessive heat, smoke, or soot from heating apparatus.]

### § 406. Enemies and pirates.

(a) Where a vessel, while proceeding on her voyage, was stopped by an enemy's blockading squadron, and sent back to port, there was no capture within the meaning of a policy providing against takings at sea.—*Patterson v. Marine Ins. Co.*, 5 H. & J. 417.



§§ 407, 408. (See Analysis.)

**§ 409. Arrests, restraints, and detentions.**

(a) The words in a policy, "assured against all risks, except seizure in port," must be understood to mean any arbitrary seizure.—*Barney v. Maryland Ins. Co.*, 5 H. & J. 139.

(b) Stoppage of a vessel by an enemy's blockading squadron, and her return to port on such account, does not constitute an arrest and detention of kings and princes, within the meaning of a provision in the policy.—*Patterson v. Marine Ins. Co.*, 5 H. & J. 417.

§§ 410-412. (See Analysis.)

**§ 413. Proximate cause of loss.**

(a) A steamboat was insured for a certain voyage subject to the "steamboat clause" of the policy, which is as follows, viz.: "It is understood that the company is not liable for any breakage or derangement of the engine, or bursting of the boiler, or any of the parts thereof, or for the effects of fire from any cause connected with the operation of the repair of an engine or boiler, unless the damage be occasioned, and the repairs rendered necessary, by the stranding or sinking of the vessel after her engine or boiler shall have been put in successful operation. It is also understood that this company is not liable for fuel, wages, and provisions, nor for any expense of any delay consequent upon repairs to the engine or boiler of any kind, or repairs to the vessel, if such repairs are rendered necessary by breakage or derangement of machinery or bursting of boilers." *Held*, that, if the immediate or proximate cause of a loss of the vessel was stranding, notwithstanding the loss can be traced back to a breakage of machinery, the "steamboat clause" does not exonerate the insurers from liability.—*Commonwealth Ins. Co. v. Cropper*, 21 Md. 311.

(b) If the immediate cause of a loss is a peril insured against, it is no defense that it was remotely caused by the negligence of the master or crew.—*Georgia Ins. & Trust Co. v. Dawson*, 2 Gill 365; *Merchants' Mut. Ins. Co. v. Butler*, 20 Md. 41.

(c) Upon a valued policy on a cargo of tin, shipped, or to be shipped, at and from New York to Baltimore, the assured may recover

a partial loss for damage by sea water, caused by the perils of the seas, though the tin was not properly dunnaged and stowed.—*Georgia Ins. & Trust Co. v. Dawson*, 2 Gill 365.

**§ 414. Cause inherent in subject-matter insured.**

(a) In marine insurance, where the injury occurs from some inherent defect in the goods themselves, which was unknown to the parties, or not specially insured against, the insurance company cannot be held liable.—*Providence-Washington Ins. Co. v. Adler*, 65 Md. 162, 4 Atl. 121, 57 Am. Rep. 314.

**§ 415. Unseaworthiness of vessel.**

**§ 416. Negligence of owners, master, or crew.**

*Cross-Reference.*  
See ante, § 413.

(a) Where the loss of a cargo was caused by a peril insured against, the fact that the scow in which the cargo was loaded was permitted to drift by reason of the negligence of the crew, did not prevent recovery by the insured.—*Western Assur. Co. v. Chesapeake Lighterage & T. Co.*, 105 Md. 232, 65 Atl. 637.

**§ 417. Wrongful acts of owners, master or crew.**

(a) If a vessel puts into a port of distress for repairs, and can be repaired so as to complete the voyage, and the captain improperly surrenders the goods to the shipper without demanding full freight, and it is thereby lost, the insurer of freight will not be answerable for the loss.—*Merchants' Mut. Ins. Co. v. Butler*, 20 Md. 41.

**(B) INSURANCE OF PROPERTY AND TITLES.**

*Cross-References.*

Extent of loss, see post, § 493.

Proof of loss or damage and cause thereof, see post, § 658.

**§§ 418-420. Limitations of risk as to place.**

*Cross-Reference.*

Exception to risk not warranty, see ante, § 264.

(a) The risk covered by a policy of fire insurance on personal property contained in a building continues only so long as the property remains in the building in which it is located at the time the policy was issued.—

*Shertzer v. Mutual Fire Ins. Co.*, 46 Md. 506. [Cited and annotated in 26 L. R. A. 243, on location of movable property as affecting fire insurance.]

(b) A policy of fire insurance upon certain rolling stock of a railroad company described the car, etc., as "contained in" certain named buildings. *Held*, that the words "contained in" were not intended merely to describe the car and engine covered by the policy, but were designed to limit the risk of the insurance company to the time during which the car and engine were actually in the car and engine houses.—*Annapolis & E. R. Co. v. Baltimore Fire Ins. Co.*, 32 Md. 37, 3 Am. Rep. 112. [Cited and annotated in 26 L. R. A. 242, on location of movable property as affecting fire insurance.]

#### § 421. Fire.

##### Annotation.

Loss caused by excessive heat, smoke, or soot from heating apparatus without actual ignition.—25 L. R. A. (N. S.) 501, note.

Liability of insurer for fire caused by earthquake.—21 L. R. A. (N. S.) 103, note.

(a) A fire policy, stipulating that insurer shall not be liable for loss caused directly or indirectly by invasion, civil war, etc., "or (unless fire ensues and in that event for the damage by fire only) by explosion of any kind \* \* \* or the bursting of a boiler, or earthquake, or hurricane, or lightning; but liability for direct damage by lightning may be assumed by specific agreement"—does not exempt insurer from liability for loss from fire caused by an earthquake, which fire originated in the building containing the property insured or spread from its point of origin until it reached the property insured; but for direct loss caused by an earthquake insurer is not liable.—*McEvoy v. Security Fire Ins. Co.*, 110 Md. 275, 73 Atl. 157, 22 L. R. A. (N. S.) 964. [Cited and annotated in 21 L. R. A. (N. S.) 104, on liability of insurer for fire caused by earthquake.]

#### § 422. Explosion.

##### Cross-Reference.

Falling of building causing forfeiture, see ante, § 324.

##### Annotation.

Liability of insurer for loss caused by explosion.—19 L. R. A. 594; 38 L. R. A. (N. S.) 474, notes.

(a) A fire insurance policy on a stock of sulphuric acid declared that the company should not be liable for loss caused by explosion, unless fire ensued, and then for the loss by fire only. The building containing the acid was prostrated by a storm, and the acid wasted. Plaintiff claimed that in consequence of the storm fire was blown in contact with escaping gases, causing an explosion. *Held*, that in either case the insured could not recover.—*Transatlantic Fire Ins. Co. v. Dorsey*, 56 Md. 70, 40 Am. Rep. 403. [Cited and annotated in 19 L. R. A. 597, on insurer's liability for loss by explosion.]

#### § 423. Lightning, wind, tornadoes, and other storms.

##### Annotation.

Causes of loss covered by cyclone, hurricane, tornado, or windstorm insurance.—L. R. A. 1915B, 1094, note.

Meaning of "cyclone," "tornado," or other kind of windstorm, in an insurance policy.—8 L. R. A. (N. S.) 308, note.

Loss by lightning.—26 L. R. A. 267, note.

#### § 424. Accident.

##### Annotation.

Insurance covering automobiles, or indemnifying against injury, or liability for injury, caused thereby.—44 L. R. A. (N. S.) 70, note.

#### § 425. Theft.

##### Annotation.

Burglary and theft insurance.—46 L. R. A. (N. S.) 562, note.

Loss by theft during fire.—35 L. R. A. (N. S.) 892, note.

#### § 426. Injury to or death of animals.

##### Annotation.

Animal insurance.—44 L. R. A. (N. S.) 569, note.

#### § 426½. Defects in or objections to title insured.

##### Cross-Reference.

Accrual of right of action on policy, see "Limitation of Actions," § 46.

#### § 427. Proximate cause of loss.

##### Cross-Reference.

See ante, § 422.

(a) Defendant insured plaintiff against all immediate loss, except by fire, to assured's property, caused by the explosion of steam boilers on plaintiff's premises. The building in which the boilers were located was equipped with an automatic sprinkler fire

extinguishing system, and, on an explosion of a pipe attached to one of the boilers, large quantities of steam escaped into the cellar, which melted the heads of the sprinklers, from which large quantities of water escaped, injuring merchandise stored therein. *Held*, that the explosion of the pipe was the proximate cause of the loss sustained, and the insurer was liable therefor.—*Hartford Steam Boiler Inspection & Ins. Co. v. Henry Sonneborn & Co.*, 96 Md. 616, 54 Atl. 610. [Cited and annotated in 38 L. R. A. (N. S.) 478, on liability of insurer for loss caused by explosion.]

#### § 428. Negligence of insured.

#### § 429. Wrongful acts of insured.

##### *Cross-Reference.*

Acquittal on charge of burning property as bar to defense on policy, see "Judgment," § 559.

##### *Annotation.*

Liability of insurance company in case of intentional destruction of property by insured.—17 L. R. A. (N. S.) 189, note.

#### (C) GUARANTY AND INDEMNITY INSURANCE.

##### *Cross-Reference.*

Extent of loss, see post, §§ 509-514.

#### § 430. Default or other misconduct of officer or employee.

#### § 431. Breach of contract guaranteed.

(a) A policy insuring rents declared that the loss should be computed from the date of the fire and cease on the premises again becoming tenantable, pursuant to assured's agreement to rebuild or repair in as short a time as the nature of the case should admit, and if assured elected not to rebuild or repair, then the loss should be determined by the time which would have been required therefor. It also provided that the company should not be liable for loss directly or indirectly caused by order of any civil authority. *Held*, that insurer was not liable for loss of rents during a period in which rebuilding was delayed because building permits were refused by the city authorities pending definite decision concerning certain street improvements.—*Palatine Ins. Co. v. O'Brien*, 107 Md. 341, 68 Atl. 484. [Cited and annotated in 47 L. R. A. (N. S.) 291, 296, on what constitutes insurance; in 21 L. R. A. (N. S.) 357, on effect of tender by defendant on right to avail himself of defenses

or counterclaims; in 23 L. R. A. (N. S.) 123, 124, on rent insurance.]

#### § 432. Nonpayment of debt insured.

(a) An indemnity bond given to insure a merchant against loss through the insolvency of debtors provided that general assignments or attachments against insolvent debtors, absconding, or executions returned nulla bona, should constitute insolvency, and that the appointment of a receiver, or a "sell-out," or the death of a debtor, should not establish insolvency, but the indemnified might recover for such claims under the bond by making legal proof of such insolvency. *Held*, in an action on the bond, that the term "insolvency" meant an inability to pay debts in the ordinary course of business, and that while general assignments or attachments, absconding, or a return nulla bona were evidence of insolvency, claims against debtors shown by any competent evidence to be insolvent were within the protection of the bond.—*Strouse v. American Credit Indemnity Co.*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. v. Strouse*, Id.

#### § 433. (Omitted from the classification used herein.)

#### § 434. Liability incurred for injury to or loss of property.

##### *Cross-Reference.*

Extent of loss and liability of insurer, see post, § 513.

#### § 435. Liability incurred for personal injury or loss of life.

##### *Annotation.*

Injuries covered by employer's indemnity policy.—30 L. R. A. (N. S.) 1192; L. R. A. 1915C, 155, notes.

#### §§ 436, 437. (See Analysis.)

#### (D) LIFE INSURANCE.

##### *Cross-References.*

Mutual benefit insurance, see post, §§ 787, 788.

Proof as to death and cause thereof, see post, § 659.

#### §§ 438-441. (See Analysis.)

#### § 442. Death caused by intemperance or use of intoxicating drinks or opium.

##### *Cross-Reference.*

Representations as to habits, see ante, § 297.

(a) In an action on a life policy which was to be void "if the death shall be caused by the use of intoxicating drink or opium," the statement of the physician was that the disease of which the insured died was "cerebral congestion, caused proximately by mental anxiety and remotely by drink." Held, that the meaning of this provision was that the things prohibited should be the direct cause of the death, in order to avoid the policy, and it was not error so to instruct the jury.—*Mutual Life Ins. Co. v. Stibbe*, 46 Md. 302. [Cited and annotated in 44 L. R. A. 849, 853, on conclusiveness of proof of loss as against insured or beneficiaries; in 15 L. R. A. (N. S.) 209, on provisions in policies against use of liquor.]

#### § 443. Death in violation of law.

##### Annotation.

Necessity that assured's death be reasonable and legitimate consequence of violation of law, in order to relieve insurer.—13 L. R. A. (N. S.) 258, note.

#### § 444. Suicide.

##### Cross-References.

Accident or health insurance, see post, § 465.

Construction of statute, see "Statutes," § 266.

#### § 445.—In general.

##### Annotation.

Incontestability of policy where defense is suicide.—42 L. R. A. 253, 260, note.

(a) The fact that a person was found dead from a pistol-shot wound in his head, with no evidence of the attendant circumstances except conjectures of witnesses, will not overthrow the legal presumption that, where death is referable to either cause, he died from accident, and not from self-destruction.—*Travelers' Ins. Co. v. Nicklas*, 88 Md. 470, 41 Atl. 906.

#### § 446.—Effect of insanity.

##### Annotation.

Effect of words "sane or insane" or other words relating to mental condition in suicide clause in policy.—17 L. R. A. (N. S.) 260, note.

Insanity as affecting condition as to suicide in life insurance policy.—35 L. R. A. 258, note.

Effect of provision avoiding policy if death results from suicide, "sane or insane."—17 L. R. A. 89, note.

(a) A condition in a life insurance policy that the policy shall become void in case "of

the insured dying by his own hand" does not extend to a case where he commits suicide while insane.—*Knickerbocker Life Ins. Co. v. Peters*, 42 Md. 414. [Cited and annotated in 17 L. R. A. 90, on effect of provision avoiding policy for suicide, "sane or insane"; in 35 L. R. A. 259, 261, 264, on effect of insanity on suicide condition in policy; in 36 L. R. A. 741, on presumption and burden of proof as to sanity.]

#### § 447. Proximate cause of death.

##### Cross-Reference.

See ante, § 442.

#### § 448. Death caused by beneficiary.

##### Cross-Reference.

Death of beneficiary caused by insured, see post, § 589.

#### (E) ACCIDENT AND HEALTH INSURANCE.

##### Cross-References.

Extent of liability of insurer, see post, § 524.

Mutual benefit insurance, see post, §§ 787, 788.

Proof as to injury and cause thereof, see post, § 659.

Admission of evidence as to accident insurance carried by master to protect himself against loss from injuries to employees, see "Master and Servant," § 267.

#### § 449. What constitutes accident in general.

##### Annotation.

Liability under accident policy for injury resulting in felon or abscess.—47 L. R. A. (N. S.) 924, note.

What constitutes an accident within accident policy.—30 L. R. A. 206, note.

(a) An unusual and unexpected result attending the performance of a usual and necessary act is an "accident" within the meaning of a policy of insurance against accidents.—*Providence Life Ins. & Inv. Co. v. Martin*, 32 Md. 310. [Cited and annotated in 30 L. R. A. 213, on what constitutes an accident to insured; in 40 L. R. A. 438, on voluntary exposure by insured to unnecessary danger.]

#### § 450. Diligence required of insured.

##### Cross-Reference.

Liability of insurance company for unauthorized act of medical examiner, see post, § 548.

#### § 451. Risks and exceptions in policy in general.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

# § 452. Risks of travel, railroads, and other conveyances.

## *Annotation.*

Scope and construction of provision for indemnity in case of injury while riding in or on a public conveyance.—37 L. R. A. (N. S.) 618; L. R. A. 1915C, 456, notes.

Applicability of provision in accident insurance policy exempting insurer in case of accident on railroad trains.—22 L. R. A. (N. S.) 1255, note.

Boarding or alighting from moving train as defense under general provisions as to exposure to danger.—10 L. R. A. (N. S.) 957, note.

# § 453. Risks of occupation or employment.

## *Cross-Reference.*

Representations as to occupation, see ante, § 296.

# § 454. Bodily infirmities or disease.

## *Annotation.*

Risks covered by insurance against sunstroke.—6 L. R. A. (N. S.) 609, note.

# § 455. External, violent, and accidental means of injury.

## *Annotation.*

Injury or disability from strain as within provision as to external, violent, and accidental means.—42 L. R. A. (N. S.) 562, note.

Liability for death by drowning.—42 L. R. A. (N. S.) 631, note.

Right to compensation on accident policy for injury resulting from exertion or strain.—2 B. R. C. 367, note.

# § 456. External and visible signs of injury.

## *Annotation.*

External and visible signs of injury from exertion or strain.—2 B. R. C. 378, note.

# § 457. Poison or contact with poisonous substances.

## *Annotation.*

Liability on accident policy for sickness or death caused by blood poisoning.—5 L. R. A. (N. S.) 926, note.

# § 458. Inhaling gas.

## *Annotation.*

Liability of company for death of insured from asphyxiation.—2 L. R. A. (N. S.) 168, note.

# § 459. (Omitted from the classification used herein.)

# § 460. Intoxication.

## *Cross-Reference.*

Representations as to habits, see ante, § 297.

# § 461. Voluntary or unnecessary exposure to danger.

## *Annotation.*

Construction compared with negligence.—40 L. R. A. 432; 22 L. R. A. (N. S.) 779; 27 L. R. A. (N. S.) 1164; 40 L. R. A. (N. S.) 135, notes.

Boarding or alighting from moving train as defense under general provision as to exposure to danger.—10 L. R. A. (N. S.) 957, note.

(a) It will not terminate an insured's right to weekly indemnity on his accident policy that after an accident to his knee, resulting in complete disability, he prematurely went upon the street, thereby bringing on a hemorrhage of the knee and prolonging his disability.—*Maryland Casualty Co. v. Gehrmann*, 96 Md. 634, 54 Atl. 678.

(b) A locomotive engineer, while backing his engine at moderate speed on a down grade, attempted to pass from the tender to a car attached, in order to apply the brakes. He slipped, fell, and was killed. Held, that he had not willfully exposed himself to an unnecessary peril.—*Providence Life Ins. & Inv. Co. v. Martin*, 32 Md. 310. [Cited and annotated, see supra, § 449.]

# § 462. Violation of law.

## *Annotation.*

Effect of the execution of insured for crime, on right to recover life or accident insurance.—14 L. R. A. (N. S.) 356, note.

Necessity that assured's death be reasonable and legitimate consequence of violation of law, in order to relieve insurer.—13 L. R. A. (N. S.) 258, note.

# § 463. Fighting or provoking assault.

# § 464. Intentional injuries.

## *Annotation.*

Accident insurance; provision exempting insurer or limiting its liability in case of an injury intentionally inflicted by another.—48 L. R. A. (N. S.) 524, note.

# § 465. Suicide or self-inflicted injuries.

## *Annotation.*

Subsequent by-law excluding or reducing liability in case of suicide.—46 L. R. A. (N. S.) 308, note.

# § 466. Proximate cause of injury or death.

# § 467. Limitation as to time of death or disability caused by accident.

### XIII. EXTENT OF LOSS AND LIABILITY OF INSURER.

#### Cross-References.

- Amount of recovery in action on policy, see post, § 666.
- Benefits under mutual benefit insurance, see post, § 791.
- Construction of policy as to amount of insurance, see ante, §§ 171-174.
- On reinsurance, see post, § 684.
- Proof of amount of loss, see post, § 661.

#### (A) MARINE INSURANCE.

#### Cross-References.

- Avoidance of policy for misrepresentation, fraud, or breach of warranty or condition, see ante, §§ 272, 273.
- Construction of policy as to subject-matter covered, see ante, §§ 159, 160.
- Forfeiture of policy for breach of promissory warrant, covenant or condition subsequent, see ante, §§ 312-314.
- Risks and causes of loss, see ante, §§ 402-417.

#### § 468. Actual total loss.

(a) If there be an urgent necessity for the sale of an insured vessel damaged by the perils of the sea, the master has a right to sell the vessel; and such sale constitutes a total loss, although there has been no valid abandonment.—*Mutual Safety Ins. Co. v. Cohen*, 3 Gill 459, 43 Am. Dec. 341.

(b) The seizure and appropriation of an insured vessel by a foreign government, without the sentence of a court of competent jurisdiction, does not divest the owner of his right of property; and so long as the vessel exists, there is the spes recuperandi, and he cannot recover as for a total loss without abandoning.—*Barney v. Maryland Ins. Co.*, 5 H. & J. 139.

#### § 469. Constructive total loss.

(a) Where an insured vessel, which was captured and condemned, was purchased by the master, who drew upon his owners for the amount, and information of the fact was communicated to the underwriters at the time of making a claim for a total loss, and the underwriters did not claim the purchase, but contested their liability, on the ground of not having seen the captain's protest, it was held that they had waived their right to consider the purchase as made for their account, and could not at the trial insist that the insured had only suffered a partial loss, but were liable for a total loss.—*Maryland Ins. Co. v. Bathurst*, 5 G. & J. 159.

#### § 470. Abandonment.

#### Cross-Reference.

Rights of insurer as salvor, see "Salvage," § 18.

(a) An insurer cannot claim for a technical or constructive total loss without an abandonment.—*Bosley v. Chesapeake Ins. Co.*, 3 G. & J. 450, 22 Am. Dec. 337.

(b) The insured addressed the following note to the underwriters: "I observe by the Boston newspaper of the 29th of January that the ship S., insured in your office, was driven ashore in a heavy gale of wind the 6th of December; and by a Charleston paper of the 26th of January, that on the 13th she was not got off. In so dangerous a position as H. Roads, it is to be feared that a total loss has ensued. I therefore, as a measure of precaution, both for your interest and my own, abandon to you, and claim a total loss." Held, that the letter did not state to the underwriters a sufficient reason for the offer to abandon, being a mere apprehension that a total loss may have taken place.—*Bosley v. Chesapeake Ins. Co.*, 3 G. & J. 450, 22 Am. Dec. 337.

(c) Intelligence received from a newspaper is sufficient advice on which to authorize an insured to abandon.—*Bosley v. Chesapeake Ins. Co.*, 3 G. & J. 450, 22 Am. Dec. 337.

(d) Information to warrant an abandonment must be of such facts and circumstances as would sustain the abandonment if existing in point of fact at the time the notice is given.—*Bosley v. Chesapeake Ins. Co.*, 3 G. & J. 450, 22 Am. Dec. 337.

(e) The mere stranding of a vessel is not of itself ground for abandonment, but the right depends on attending circumstances.—*Bosley v. Chesapeake Ins. Co.*, 3 G. & J. 450, 22 Am. Dec. 337.

(f) An election to abandon cannot be made until receipt of advice of loss.—*Bosley v. Chesapeake Ins. Co.*, 3 G. & J. 450, 22 Am. Dec. 337.

(g) By a warranty "not to abandon, in case of capture, until condemned," in a policy of insurance, is meant a capture jure belli, and a judicial condemnation on such capture by a prize court of competent jurisdiction. If, therefore, the vessel is captured, and retained in the service of the government to

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

which the captor belongs, without such condemnation, the insured cannot abandon.—*Barney v. Maryland Ins. Co.*, 5 H. & J. 139.

(h) The owner of a vessel immediately after her capture abandoned her to the insurers, and claimed for a total loss, which was paid to him. The vessel and cargo were afterwards restored, and freight was paid to the underwriters. *Held*, that the freight, before and after the capture, was susceptible of apportionment, and that the owner was entitled to all the freight earned to the time of the capture.—*Kennedy v. Baltimore Ins. Co.*, 3 H. & J. 367, 6 Am. Dec. 499.

#### § 471. Partial loss in general.

(a) Where a vessel puts into a port of distress, and cannot be repaired so as to be capable of completing the voyage, and the shipper demands and the owner delivers the goods at such intermediate port, it is a case of freight pro rata earned, and the underwriters will be liable for a partial loss.—*Merchants' Mut. Ins. Co. v. Butler*, 20 Md. 41.

(b) A vessel and cargo, after being captured, were libeled as prize and for salvage in an admiralty court, and part of the cargo was sold by a decree of the court for less than its value, according to the invoice and actual price, and the proceeds paid to the insured. The vessel and cargo were afterwards released and restored to the assured, who sold the residue of the cargo for less than its value, according to the invoice, and received the price. *Held*, that the insured could recover, as for a partial loss, for the loss in the sale of the part sold under order of court, but not for the loss produced by the sale of the part of the cargo sold by the insured himself.—*Baltimore Ins. Co. v. McFadon*, 4 H. & J. 31.

#### § 472. Limitation of liability by memorandum clause.

*Cross-Reference.*

See post, § 478.

(a) A usage of the city of Baltimore not to add the premium note to the invoice value in estimating losses on marine insurance policies may be shown for the purpose of determining whether a loss was total, within the meaning of a memorandum clause.—

*Merchants' Mut. Ins. Co. v. Wilson*, 2 Md. 217.

#### §§ 473-475. Value of subject-matter.

*Cross-Reference.*

Proof of value, see post, § 660.

(a) Where there is a loss by capture and a claim for partial loss, the *spes recuperandi* cannot be resorted to as a criterion by which to ascertain, without any other evidence, the amount of the loss sustained.—*Barney v. Maryland Ins. Co.*, 5 H. & J. 139.

#### § 476. Insurance of part of value.

(a) Upon an insurance of one-fourth the value of the ship, the insurer is liable only for one-fourth the amount of a loss, though the whole loss be less than the amount insured.—*Whiting v. Independent Mut. Ins. Co.*, 15 Md. 297. [Cited and annotated in 23 L. R. A. 121, on payment by volunteer or stranger.]

#### § 477. General average contribution.

*Cross-Reference.*

Rights and liabilities in relation to general average, see "Shipping," §§ 186-202.

(a) The defendant issued a policy of insurance against fire on the plaintiff's steamer. While the steamer was loading at the port of Savannah, a fire was discovered in a cargo of cotton stored in its forehold, and, to save the steamer and cargo from destruction, the vessel was submerged. The damage to the cargo was adjusted by general average at the port of Baltimore, and a proportion of this loss was assessed upon the steamer. The plaintiff sued to recover, not only the sum found to be the actual loss inflicted on the steamer by the fire, but also the general average assessment upon the vessel as an immediate consequence of the fire. *Held*, that he could not recover the general average assessment.—*Merchants' & Miners' Transp. Co. v. Associated Firemen's Ins. Co.*, 53 Md. 448, 36 Am. Rep. 428.

#### § 478. Exception of particular average or partial loss.

*Cross-Reference.*

See ante, § 472.

(a) A vessel arrived at her port of destination, and delivered a part of her cargo, which was insured, in safety. In the progress of a regular delivery of the balance, it was partially damaged by the perils of the

sea. In an action for a partial loss, it was held, that, although the amount of the particular loss did not reach 5 per cent. on the whole value of the cargo shipped, still the insured was entitled to recover, the loss being more than 5 per cent. on the amount at risk at the time of the damage.—*Maryland Ins. Co. v. Bosley*, 9 G. & J. 337.

#### § 479. Effect of other insurance.

(a) A marine insurance policy contained the American clause, that, "if there be any prior insurance, these insurers shall be answerable only for so much of the amount as such prior insurance shall be deficient towards fully covering the premises hereby insured, \* \* \* and, in case of any insurance upon said premises subsequent in date to this policy, this company shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent insurers," etc. Held, that such clause is of no effect, except in cases of double insurance.—*Whiting v. Independent Mut. Ins. Co.*, 15 Md. 297. [Cited and annotated, see supra, § 476.]

(b) If another insurance be made subsequently, with the American clause, that, "if there be any prior insurance, these insurers shall be answerable only for so much of the amount as such prior insurance shall be deficient towards fully covering the premises hereby insured," etc., "and, in case of any subsequent insurance, these insurers to be answerable for the full extent of their insurance, without right of contribution," these subsequent insurers are liable for such proportion of the loss as the amount they insure bears to the whole value.—*Whiting v. Independent Mut. Ins. Co.*, 15 Md. 297. [Cited and annotated, see supra, § 476.]

§§ 480-486. (See Analysis.)

#### §§ 487-489. Expenditures.

(a) In an insurance on a vessel, no loss incurred by reason of wages, provisions, or demurrage, during her detention in port, can be recovered.—*Barney v. Maryland Ins. Co.*, 5 H. & J. 139.

§§ 490, 491. (See Analysis.)

#### § 492. Deductions and offsets.

(a) The liability of a shipowner to the shipper for the negligence of the master and crew cannot avail the insurer as a defense.—*Georgia Ins. & Trust Co. v. Dawson*, 2 Gill 365.

(b) Freight was insured on a voyage at and from Montevideo to Cape Corrientes, and at and from thence to Boston, estimated at \$4,000, and due at Boston on the right delivery of the cargo. The vessel proceeded to Cape Corrientes, discharged and took in part of her cargo there, where she was seized by a foreign ship of war, carried back, and detained, and, Cape Corrientes being blockaded, the voyage was broken up, and, 47 days after her capture, the vessel proceeded on another voyage. The claim for freight against the charter was submitted to arbitration, and \$1,200 awarded, and the charter party canceled. It was held, in an action on the policy, that the underwriters were entitled to deduct the \$1,200, but not any part of the vessel's earnings on the subsequent voyage.—*Charleston Ins. & Trust Co. v. Corner*, 2 Gill 410.

#### (B) INSURANCE OF PROPERTY AND TITLES.

##### Cross-Reference.

Construction of policy as to property or title covered, see ante, §§ 162-166.

#### § 493. Total loss.

##### Annotation.

Constructive total loss of insured building.—56 L. R. A. 784; 39 L. R. A. (N. S.) 1182, notes.

§§ 494-496. (See Analysis.)

§ 497. (Omitted from the classification used herein.)

#### §§ 498-500. Value of property destroyed.

##### Cross-References.

Proof of value, see post, § 660.

Representations and warranties as to value of property, see ante, § 281.

Laws providing that insurance company shall not deny the value of the property as stated in policy as impairing obligation of contracts, see "Constitutional Law," § 166.

##### Annotation.

Liability of insurer for value of party wall.—20 L. R. A. (N. S.) 226, note.

(a) The holder of two policies of fire insurance—one taken out by himself, and the other by his lessees, on machinery put on



the insured property by them, and assigned to the lessor as collateral security for money loaned—is entitled to recover the full loss or damage sustained by him, to be estimated, according to the language of the policy, “according to the actual value of the property at the time of the fire,” with interest thereon, in the discretion of the jury, after three months from the date of notice and proof of loss.—*Planters’ Mut. Ins. Co. v. Rowland*, 66 Md. 236, 7 Atl. 257. [Cited and annotated in 45 L. R. A. (N. S.) 125, on change in use or condition of mill or factory as avoiding policy.]

§§ 501, 502. (See Analysis.)

§ 503. Amount of interest of insured.

(a) Upon a policy for account of whom it may concern, in an action by A., where the plaintiff did not disclose by the pleadings any other interest or damage than his own, it was held that he could not recover for more than the proportion in which he was interested.—*Charleston Ins. & Trust Co. v. Corner*, 2 Gill 410.

§ 504. Effect of other insurance.

*Cross-Reference.*

Ancillary jurisdiction of federal court to restrain actions on policies in order to adjust the liability of the respective insurers, see “Courts,” § 264.

(a) Where, in an action on a policy insuring a bridge, it appeared that the main bridge was destroyed by fire, and that the loss exceeded the amount of all the insurance thereon, the court properly charged at plaintiff’s request that the jury in estimating the damages must find from the evidence the actual cash value of the whole property destroyed, and, if the whole loss exceeded the amount of the insurance, they should find a verdict for the full amount of the policy, with interest.—*Citizens’ Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 113 Md. 430, 77 Atl. 378.

(b) A provision in the average clause of a fire insurance policy, issued to a carrier, that “any floating policy, attaching in whole or in part to the property covered, \* \* \* shall \* \* \* be considered as contributing insurance,” applies to floating policies taken out by the owners of the goods insured.—*Fire Ins. Ass’n v. Merchants’ & Miners’ Transp. Co.* 66 Md. 339, 7 Atl. 905, 59 Am.

Rep. 162. [Cited and annotated in 52 L. R. A. 331, 342, on when insurable interest must exist under fire policies; in 13 L. R. A. (N. S.) 154, on right to insurance taken in agent’s name.]

(c) A warehouse company, which received goods on storage, and issued receipts therefor to the depositors, effected an insurance against fire on the goods, etc., contained in their warehouse, in two separate companies. In the one policy the insurance was “on merchandise generally \* \* \* held by them, or in trust”; in the other the insurance was “on merchandise \* \* \* their own, or held by them in trust, or in which they had an interest or liability.” H. had cotton on storage with the company, and had taken out specific policies of insurance thereon which he had assigned to the company to secure advances made to him by them. The warehouse was destroyed by fire, and of the large amount of cotton stored therein some was saved uninjured, some was saved in a damaged condition, and some was totally destroyed. In an action by H., on his policies, for the use of the company, held, that the policies sued on, having been made payable to the warehouse company, insured to the benefit of the company, and might be considered as in favor of the same assured, on the same interest in the same subject, and against the same risks as the policies which were issued directly to the company; they, with the latter, constituted double policies, and the companies issuing them were therefore bound to contribute their respective proportions of the loss.—*Hough v. People’s Fire Ins. Co.*, 36 Md. 398. [Cited and annotated in 52 L. R. A. 342, on when insurable interest must exist under fire policies; in 16 L. R. A. (N. S.) 1182, on parol-evidence rule as to varying or contradicting written contracts, as affected by doctrine of waiver or estoppel of insurer.]

(d) A firm insured in a Baltimore company on their own goods, and in certain foreign companies on the same goods and others held on commission. The first policy contained a covenant limiting the liability upon it to a share of the loss in proportion to the amount of all the policies. The whole insurance did not cover the amount of the loss, and the Baltimore company refused to pay more than their proportional part thereof. Held, that the foreign policies were not within the effect

of the covenant relating to other insurances, and that the Baltimore company was not entitled to any abatement of its liability by reason of them.—*Baltimore Fire Ins. Co. v. Loney*, 20 Md. 20. [Cited and annotated in 52 L. R. A. 343, on when insurable interest must exist under fire policies.]

§§ 505, 506. (See Analysis.)

§ 507. Loss of rent and profits.

(a) Under a policy insuring rents, but requiring insured to rebuild, and providing that insured should not be liable beyond the actual value destroyed by fire for loss caused by ordinance or law regulating construction or repair of buildings or by interruption of business or otherwise, insurer is not liable for loss of rent caused by the city authorities in delaying rebuilding, pending ordinance relocating street lines.—*Palatine Ins. Co. v. O'Brien*, 109 Md. 100, 71 Atl. 775; *O'Brien v. Palatine Ins. Co.*, Id. [Cited and annotated in 23 L. R. A. (N. S.) 123, on rent insurance.]

(b) Under a policy insuring rents, but requiring insured to rebuild as soon as the nature of the case would admit, and providing that insurer should not be liable for loss caused by "interruption of business," insurer is not liable for loss of rent from interruption of business caused by delays in rebuilding resulting from the fall of debris of the fire throughout the burnt district.—*Palatine Ins. Co. v. O'Brien*, 109 Md. 100, 71 Atl. 775; *O'Brien v. Palatine Ins. Co.*, Id. [Cited and annotated, see supra.]

§§ 507½, 508. (See Analysis.)

(C) GUARANTY AND INDEMNITY INSURANCE.

Cross-References.

Construction of policy as to duties and obligations guarantied, see ante, § 168.  
Risks and causes of loss, see ante, §§ 430-435.

§ 509. Loss by breach of contract guarantied.

§ 510. (Omitted from the classification used herein.)

§ 511. Loss of debt insured.

(a) Where, in a suit on a bond given to indemnify a merchant for losses arising from the insolvency of debtors, it appears that no provision of the bond forbids a compromise of the insured debts, and it is not shown

that the defendant was in any way injured by such compromises, nor that more money could have been secured from the debtors than was obtained by compromising, the insurer cannot insist that he is relieved of responsibility because some of the insured debts were compromised.—*Strouse v. American Credit Indemnity Co.*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. v. Strouse*, Id.

(b) An indemnity bond given a merchant to insure against insolvency of debtors in excess of an initial gross loss of \$10,000, to be first borne by himself, had a "rider" attached to it, whereby similar losses, provable under a renewal of a lapsed certificate of insurance similar to the bond, might be proved under the bond, "in accordance with its terms and conditions." The lapsed certificate guarantied the indemnified against losses in excess of an initial loss of \$6,250, and provided that losses occurring after its expiration on goods shipped during its continuance should be provable under a renewal of it. Held, that only such losses under the certificate as were in excess of the initial loss of \$6,250 were provable under the bond, the provision of the certificate as to such initial loss being regarded as incorporated in the bond, and the provision as to the "terms and conditions" of the latter relating only to the mode of proving such claims.—*Strouse v. American Credit Indemnity Co.*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. v. Strouse*, Id.

(c) An indemnity bond given a merchant insured him against loss through the insolvency of debtors to the extent of \$20,000 over and above an initial gross loss of \$10,000, to be first borne by himself. It provided that all claims making up the initial loss should remain the property of the indemnified, and that a first proof of loss should be made within 20 days after knowledge of the insolvency of a debtor, and another and final proof within 20 days from the expiration of the bond, and that the amount due from the company under final proof should be adjusted and paid within 60 days after receipt of such final proof. Held, that, as the company's liability was referable to the final proof of loss, the initial loss to be borne by

the indemnified was to be ascertained as of the same period, and hence that a debt due from an insolvent debtor within the terms of the bond, but paid before the bond expired, was not to be reckoned as a part of the initial loss.—*Strouse v. American Credit Indemnity Co.*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. v. Strouse*, Id.

**§ 512. Liabilities incurred for injuries to persons or property.**

**§ 513. Expenditures.**

*Annotation.*

Liability under policy indemnifying against liability for injuries to compensate insured for expenses incurred in successful defense or compromise of action.—44 L. R. A. (N. S.) 609, note.

How far does limitation of liability in policy of indemnity insurance against liability for injuries to employees and others include expenses of litigation.—43 L. R. A. (N. S.) 1128, note.

**§ 514. Damages incurred or paid.**

(a) Under a policy of insurance indemnifying employers and carriers for liability incurred by reason of accident, the liability of the insurer becomes fixed on the happening of the accident or casualty, even though the amount of such liability is contingent, to the extent that the amount which the insured may be adjudged to pay has not yet been ascertained.—*Boston & A. R. Co. v. Mercantile Trust & Deposit Co.*, 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; *American Casualty Ins. Company's Case*, Id. [Cited and annotated in 46 L. R. A. (N. S.) 187, on right of receiver to insurance funds deposited with state official; in 55 L. R. A. 50, on set-off in bankruptcy; in 19 L. R. A. (N. S.) 640, on right to return of premiums on adjudication of insurer.]

**(D) LIFE INSURANCE.**

*Cross-Reference.*

Interest on amount of insurance, see "Interest," § 44.

**§§ 515, 516. (See Analysis.)**

**§ 517. Amount of incontestable or paid-up policy.**

(a) A nonforfeitable policy provided that if any premiums were not paid the company should only be liable for an amount proportionate to the number of premiums paid. It appeared that, prior to his death, the assured had paid 27 regular quarterly premiums, and then made default, and that afterwards 4

other quarterly premiums had become due and were left unpaid. *Held*, that plaintiff (to whom the policy had been issued) could recover  $\frac{27}{51}$  of the amount of the policy, with interest, in the discretion of the court, on the amount so ascertained, from the date of the institution of the suit.—*Mutual Life Ins. Co. v. Bratt*, 55 Md. 200.

**§ 518. Limitation of liability to amount of assessment.**

**§§ 519-521. Participation in dividends or profits.**

(a) A 20-year insurance policy provided the manner in which the policy could, before the expiration of the period, on default in payment of premiums, be transferred into a fully "paid-up policy" for a certain percentage of the original amount, and among the requirements were the surrender of the policy and the acceptance of a new form of policy, and in the same connection provided that a "paid-up policy" would not entitle insured to the surplus for which provision was made in the 20-year policy. Insured, before the expiration of the period, and while his policy was still in force with all premiums paid, consulted the company's officers and stated that he wished to commute the premiums for the remaining time, and was told that the premiums would be commuted, but that, if he died, he would lose the premiums paid. A written memorandum of the commutation was made on the policy, which simply provided that a gross sum be paid in lieu of the premiums thereafter to become due, and concluded with the expression "making the policy paid up." *Held*, that the written memorandum would not make the policy a "paid-up policy" within the meaning of the other terms of the policy, so as to exclude insured from participation in the surplus.—*Mutual Life Ins. Co. v. Murray*, 111 Md. 600, 75 Atl. 348.

**§ 522. Share in tontine fund.**

**§ 523. Deductions and offsets.**

*Annotation.*

Right to deduct indebtedness of insured extrinsic to insurance contract.—37 L. R. A. (N. S.) 556, note.

**(E) ACCIDENT AND HEALTH INSURANCE.**

**§ 524. Total disability.****Annotation.**

What constitutes total disability of insured.—38 L. R. A. 529; 23 L. R. A. (N. S.) 352; 29 L. R. A. (N. S.) 635; 34 L. R. A. (N. S.) 126, notes.

**§ 525. Confinement to house or bed or under care of physician.****Annotation.**

Construction and effect of condition in accident or health policy that assured must be confined to the house to entitle him to indemnity.—23 L. R. A. (N. S.) 359; 42 L. R. A. (N. S.) 700, notes.

(a) A policy insuring against diseases provided for a weekly indemnity for the period an assured "should be necessarily confined to the house." *Held*, that the clause, in the case of a person taking treatment for tuberculosis, meant confined to any part of the house, either inside or upon the porches attached to it on the outside.—*Dulany v. Fidelity & Casualty Co.*, 106 Md. 17, 66 Atl. 614. [Cited and annotated in 23 L. R. A. (N. S.) 359, on construction and effect of condition that assured must be confined to house.]

§§ 526-532. (See Analysis.)

**XIV. NOTICE AND PROOF OF LOSS.****Cross-References.**

Mutual benefit insurance, see post, § 789.

On reinsurance, see post, § 685.

Proof of notice and proof of loss, see post, § 662.

Rights of policy holders on insolvency of company, see ante, § 63.

§§ 533, 534. (See Analysis.)

**§ 535. Necessity of notice.****Cross-Reference.**

Condition precedent to action, see post, § 612.

**§ 536. Necessity of statement or proof of loss.****Cross-Reference.**

Condition precedent to action, see post, § 612.

(a) Conditions in a fire policy requiring proofs of loss, when set out in the policy, form part of the contract, binding on both parties, and must be complied with unless waived.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 113 Md. 430, 77 Atl. 378.

**§ 537. Persons who may give notice or make proof.****Cross-Reference.**

Authority of receiver in bankruptcy, see "Bankruptcy," § 114.

**§ 538. Persons to whom notice or proof may be given or made.****§ 539. Time for notice and proof.****Annotation.**

Delay in giving notice of claim under employers' indemnity policy.—38 L. R. A. (N. S.) 62; 47 L. R. A. (N. S.) 1214, notes.

When delay in giving notice or making proof of death under policy of life insurance is excusable.—41 L. R. A. (N. S.) 285, note.

When strict compliance with requirement as to time of notice in accident or health policy is excused.—18 L. R. A. (N. S.) 109; 27 L. R. A. (N. S.) 319, notes.

Validity of provision of accident or health policy requiring notice of accident or sickness within specified time.—18 L. R. A. (N. S.) 106, note.

Forfeiture by failure to furnish proofs of loss within a stipulated time.—18 L. R. A. 85, note.

(a) In a clause in an accident policy, which required notice of injury to be given as soon as might be reasonably possible, a notice given by a physician, of loss of sight due to infection from an operation, five months after the injury was received, but as soon as he learned that his sight was destroyed, was sufficient.—*Maryland Casualty Co. v. Ohle*, 120 Md. 371, 87 Atl. 763.

(b) Where a fire policy required that proofs of loss be furnished within 60 days, there was no error in a ruling that if the requirement was not waived, and the proofs were not filed within such time, there could be no recovery on the policy.—*Leftwich v. Royal Ins. Co.*, 91 Md. 596, 46 Atl. 1010.

(c) A provision of a life policy requiring proofs of death to be furnished within 90 days after death does not apply where the legal owner of the policy, without fault of his own, did not learn of its existence until more than 90 days after the death of insured.—*McElroy v. John Hancock Mut. Life Ins. Co.*, 88 Md. 137, 41 Atl. 112, 71 Am. St. Rep. 400. [Cited and annotated in 50 L. R. A. 46, on life insurance as assets of bankrupt or insolvent; in 41 L. R. A. (N. S.) 286, as to when delay in notice or proof of death under insurance policy excusable.]

(d) The word "immediately," as used in a fire insurance policy, which required that proofs of loss should be furnished in writing immediately after the fire, means within a reasonable time.—*Rokes v. Amazon Ins. Co.*, 51 Md. 512, 34 Am. Rep. 823.

(e) Where a policy requires notice of a loss to be given "forthwith," it must be understood to mean with all due diligence.—*Edwards v. Baltimore Fire Ins. Co.*, 3 Gill 176.

(f) Where a policy requires the assured as soon as possible to give a particular account of a loss by fire, the phrase should be construed to mean "without unnecessary delay."—*Edwards v. Baltimore Fire Ins. Co.*, 3 Gill 176.

#### § 540. Sufficiency of notice.

#### § 541. Protests and surveys on marine losses.

(a) Under a clause in a policy of insurance providing for payment in 90 days after proof of loss, the proof to be exhibited in case of a partial loss is the protest, bill of lading, and invoice, or such equivalent proof as the nature of the loss admits of.—*Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289. [Cited and annotated in 15 L. R. A. 142, on agreements to arbitrate; in 47 L. R. A. (N. S.) 359, 360, 413, 427, 429, on arbitration agreements; in 15 L. R. A. (N. S.) 1073, on arbitration as condition precedent to action on policy.]

(b) A notary public, except in those cases where a protest by the *lex mercatoria* or by statute is authorized, has no authority to take a protest.—*Patterson v. Maryland Ins. Co.*, 3 H. & J. 71, 5 Am. Dec. 419.

#### § 542. Statements or proofs of loss of or damage to property.

(a) Where the insured shows that he could not, by the use of such reasonable means as were within his power, secure bills or duplicates, it is a sufficient excuse for his failure to comply with a demand for them, made under a provision in the policy.—*Mutual Fire Ins. Co. v. Pickett*, 117 Md. 638, 83 Atl. 1097.

(b) Where an insurer waived the preliminary notice and proof of loss required by the policy, the insured, having left with the insurer's agent a list of the articles destroyed or damaged, is not deprived of the right of recovery because of failure to leave with the insurer's agent a list of the undamaged articles.—*Spring Garden Ins. Co. v. Whayland*, 103 Md. 699, 64 Atl. 925.

#### § 543. Proofs of death of or injury to insured.

##### Cross-Reference.

Evidence of death, see "Death," §§ 1-6.

#### § 544. Production of documentary evidence.

(a) A requirement of an insurance policy that in case of loss the insured shall furnish a copy of the description and schedules contained in other policies, covering the same property, is substantially complied with by the furnishing of a list of all other policies, giving the names of the several companies, the number and amount of each policy, with the date of expiration, together with a copy of the written portions of each.—*Scottish Union & Nat. Ins. Co. v. Keene*, 85 Md. 263, 37 Atl. 33. [Cited and annotated in 51 L. R. A. 708, on conditions in policy as to keeping, producing and preserving books and papers; in 52 L. R. A. 425, 427, on duty of insured to submit to examination and furnish information.]

(b) A compliance by insured with a condition in a policy on a stock of goods requiring insured in case of loss to produce the books of account, bills of purchase or duplicates thereof, is essential to a recovery on the policy.—*Farmers' Fire Ins. Co. v. Mispelhorn*, 50 Md. 180. [Cited and annotated in 51 L. R. A. 702, 703, on conditions in policy as to keeping, producing, and preserving books and papers.]

#### § 545. Verification of statement or proofs.

#### § 546. Certificate of magistrate or other officer.

(a) The terms of a fire policy, requiring the insured "to produce the certificate under seal of the magistrate or notary public living nearest the place of fire" as to the amount of loss, etc., are sufficiently complied with where the certificate of such magistrate is presented, stating some of the facts required, and that affiant is not competent to state others, as he has not been on the place sufficiently, and also the certificate, stating all the required facts, of another magistrate, who did not live as near as the former, but whose office was nearer.—*Agricultural Ins. Co. v. Bemiller*, 70 Md. 400, 17 Atl. 380.

**§ 547. Certificate of physician attending insured.**

*Cross-Reference.*

As constituting privileged communications, see "Witnesses," § 211.

**§ 548. Examination of insured.**

*Annotation.*

Duty of insured to submit to examination and furnish information.—52 L. R. A. 424, note.

**§ 549. Inspection of person of insured after injury or death.**

**§ 550. Effect of statements and proofs in general.**

*Cross-Reference.*

Sufficiency of evidence of notice and proof, see post, § 665.

*Annotation.*

Conclusiveness of proof of loss as against insured or his beneficiaries.—44 L. R. A. 846, note.

**§§ 551, 552. (See Analysis.)**

**§ 553. Fraud or false swearing.**

*Annotation.*

Effect of false swearing in proofs of loss.—32 L. R. A. (N. S.) 453, note.

(a) As false swearing to avoid a fire insurance policy must not only be false, but must be willful and with intent to defraud, a proof of loss by the insured, acknowledged before a notary, which included as his own his wife's clothing and sewing machine, was not false swearing, where he made the statement under the impression that his wife belonged to him, and that he owned her possessions, and willingly admitted this on cross-examination, and it in no way appeared that he intended to defraud the company, or that they were defrauded.—*German Union Fire Ins. Co. v. Cohen*, 114 Md. 130, 78 Atl. 911.

**§ 554. Estoppel or waiver as to notice and proofs or defects and objections.**

**§ 555.— In general.**

(a) Where the company should have known that proof of loss had not been filed within thirty days as required by the policy, held, that such knowledge would be charged to the president of the company.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 116 Md. 422, 82 Atl. 372.

(b) A condition in a fire policy that the company shall not be deemed to have waived

a compliance with its terms unless such waiver shall be in writing and signed refers only to the provisions which are essential to the contract, but does not affect stipulations as to notice and proof of a loss.—*Farmers' Fire Ins. Co. v. Baker*, 94 Md. 545, 51 Atl. 184. [Cited and annotated in 19 L. R. A. (N. S.) 643, on effect of appointment of receiver for insured on fire insurance.]

(c) Estoppel, as an element in connection with a waiver of preliminary proofs of loss, means where the insurer, knowing that the proofs have not been furnished within time, so bears himself thereafter in relation to the contract as fairly to lead the assured to believe that he still recognizes the policy to be in force and binding upon him.—*Rokes v. Amazon Ins. Co.*, 51 Md. 512, 34 Am. Rep. 323.

(d) A clause in a fire insurance policy that "no waiver or modification of any of the terms or conditions of this policy shall be made in any event" does not refer to those stipulations which were to be performed after a loss had occurred, such as giving notice and furnishing proofs of loss.—*Rokes v. Amazon Ins. Co.*, 51 Md. 512, 34 Am. Rep. 323.

**§ 556.— Powers of officers or agents.**

(a) Waiving the condition as to formal proof of loss is at least within the scope of the apparent authority of a special agent of the company sent by it to view the ruins, investigate the loss, and find out as much about it as he could, who, being consulted with by the local agent, when asked when the policy would be paid, replied authoritatively, and to whom the proofs of loss when finally made, were turned over, together with the whole matter, for such action as he should see proper in the premises.—*Hartford Fire Ins. Co. v. Keating*, 86 Md. 130, 38 Atl. 29, 63 Am. St. Rep. 499. [Cited and annotated in 13 L. R. A. (N. S.) 844, 866, on effect of non-waiver agreement on conditions existing at inception of policy.]

(b) Plaintiff applied to the local agent of the A. Insurance Company for a renewal of a policy of \$3,000. The general agent of the A. returned a renewal policy for \$1,500 and a policy in the B. Company, for whom, however, neither he nor the local agent of the A. were agents, for an additional \$1,500. Plain-

tiff accepted these policies, paid his premiums through the same agents, and through them obtained a renewal of the policy of the B. Company, knowing, however, that they were not its agents. A loss occurring, an adjuster appeared, introduced by the local agent aforesaid, and being in fact, the agent of the A. Company only. Certain papers were signed, and the adjuster said that if anything further was required he would notify plaintiff. The B. Company not receiving proof of loss within the required time, and it being claimed that there was a waiver of such proof, *held*, that the agents aforesaid had no authority to waive proof of loss for the B. Company; a condition in the policy being as follows: "It is a part of this contract that any person, other than the assured, who may have procured this insurance to be taken by this company, shall be deemed to be the agent of the assured named in the policy, and not of this company, under any circumstances whatever, or in any transaction relating to this insurance."—*Atlantic Ins. Co. v. Carlin*, 58 Md. 336. [Cited and annotated in 20 L. R. A. 283, on insurance agent as agent of assured.]

#### § 557.—Express waiver.

(a) Where no objection is made to proofs of loss or absence of a certificate required to accompany them, and the company refuses to pay on other grounds, it cannot set up such objections in a suit on the policy, notwithstanding the policy provides that nothing but a distinct agreement indorsed thereon shall operate as a waiver of its conditions.—*Franklin Fire Ins. Co. v. Chicago Ice Co.*, 36 Md. 102, 11 Am. Rep. 469. [Cited and annotated in 44 L. R. A. (N. S.) 149, 151, on provision that working of mechanics shall avoid insurance.]

(b) A clause in a fire policy that nothing but a distinct agreement, clearly expressed and indorsed thereon, shall operate as a waiver of its conditions, has no reference to stipulations which are to be performed after loss has occurred, such as giving notice and furnishing proofs.—*Franklin Fire Ins. Co. v. Chicago Ice Co.*, 36 Md. 102, 11 Am. Rep. 469. [Cited and annotated, see *supra*.]

#### § 558.—Implied waiver in general.

(a) A fire insurance company *held* estopped from asserting that it did not in-

tend to waive a forfeiture.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 116 Md. 422, 82 Atl. 372.

(b) Acts or conduct of the insurer calculated, under the circumstances, to mislead insured and induce him to believe that performance of the condition of furnishing proofs of loss will not be required, or that such proofs would be ineffectual and nugatory, will, if misleading insured, amount to a waiver of proofs.—*Bakhaus v. Caledonian Ins. Co.*, 112 Md. 676, 77 Atl. 310.

(c) A fire policy required the insured, in case of loss, to furnish within 30 days proof of loss, with a further provision that on assignment of the policy the insured, and not the assignee, must furnish the proof. After a fire the company's agents informed the mortgagee, who was the assignee of the policy, that he would get the money without further action. The mortgagee informed the company of the loss of the policy, and requested information as to the presentation of his claim. The company referred him to the policy, stating that the claim must be made within 6 months. Thereafter, but within 30 days, he sent to the company a statement of the loss and a claim, with an offer to correct the claim if not in proper form. The company denied that such a policy was in force, and stated, if it was, that the insured make the proofs, but, if the statement was sworn to, it would prove that he was a mortgagee of the insured. He immediately requested the return of the statement, so as to verify it, and again informed the company that the policy was lost, and of his inability to make the proofs according to its terms. The statement was not returned until after 30 days from the loss. Thereafter the company denied liability on the policy. *Held*, that the company, by its conduct, had waived the conditions in the policy as to time and mode of proving a loss.—*Farmers' Fire Ins. Co. v. Baker*, 94 Md. 545, 51 Atl. 184. [Cited and annotated in 19 L. R. A. (N. S.) 643, on effect of appointment of receiver for insured on fire insurance.]

(d) Where an agent of a fire insurance company, acting with apparent authority, after a view of the premises where a fire occurred, informs the mortgagee of the premises, and to whom the policy is made

payable, that he will have opportunity to get any money paid without further action on his part, the company recognizes the claim of the mortgagee under the policy.—*Farmers' Fire Ins. Co. v. Baker*, 94 Md. 545, 51 Atl. 184. [Cited and annotated, see supra.]

(e) Insurer waives a provision requiring proofs of death to be furnished within a certain time where it writes the beneficiary for further information.—*McElroy v. John Hancock Mut. Life Ins. Co.*, 88 Md. 137, 41 Atl. 112, 71 Am. St. Rep. 400. [Cited and annotated in 50 L. R. A. 46, on life insurance, as assets of bankrupt or insolvent; in 41 L. R. A. (N. S.) 286, as to when delay in notice or proof of death under insurance policy excusable.]

(f) An authorized agent of a company, who, after viewing the premises, and examining into the circumstances of the fire, and the value of the building, tells the mortgagees, who are interested in the insurance, that the building is a total loss, and that he will send a check payable to them and the owners jointly, thereby recognizes the company's liability, and waives formal proofs of loss, if he so intends, and plaintiffs so understand it, and acts accordingly.—*Hartford Fire Ins. Co. v. Keating*, 86 Md. 130, 38 Atl. 29, 63 Am. St. Rep. 499. [Cited and annotated in 13 L. R. A. (N. S.) 844, 866, on effect of nonwaiver agreement on condition existing at inception of policy.]

(g) When, in making out proofs of loss, certain articles are omitted from the list at the request of the agent of insurer, due to the fact that there was doubt as to insurer's liability therefor, he will be deemed to have waived proofs of loss in regard to such articles.—*Planters' Mut. Ins. Co. v. Engle*, 52 Md. 468. [Cited and annotated in 52 L. R. A. 343, on when insurable interest must exist under fire policies.]

(h) A provision in a policy requiring proofs of loss may be waived by the acts and conduct of the insurer.—*Rokes v. Amazon Ins. Co.*, 51 Md. 512, 34 Am. Rep. 323.

(i) Where the insurer fails to advise the insured of defects in the notice and proofs of loss, but proceeds to negotiate with him without adverting to such defects, and bases its refusal to pay on other and distinct grounds, it is estopped from afterwards relying on the defects.—*Franklin*

*Fire Ins. Co. v. Chicago Ice Co.*, 36 Md. 102, 11 Am. Rep. 469. [Cited and annotated in 44 L. R. A. (N. S.) 149, 151, on provision that working of mechanics shall avoid insurance.]

#### § 559.—Denial of liability.

(a) Where, after a loss by fire insured against, the insured furnished a list of the articles destroyed or damaged to the insurer's agent, and no objection was made to the proofs of loss except by a letter to the attorney of the insured over a month after the fire, which was never received, and payment of the loss was refused on the ground that the fire was of incendiary origin, a provision of the policy requiring proof of loss under oath of the insured was waived.—*Spring Garden Ins. Co. v. Whayland*, 103 Md. 699, 64 Atl. 925.

(b) Where the beneficiary in a policy filed proofs of death, and insurer declined to pay the claim on the ground that the proofs which plaintiff supplied showed that insured was afflicted with consumption before the policy was issued, and that there was therefore a breach of warranty, and there was no evidence that insurer knew or had reason to believe that the proofs furnished did not relate to insured, there was no waiver of the production of the necessary proofs required by the policy, so as to entitle plaintiff to recover on evidence that the proofs furnished related to another.—*Mutual Life Ins. Co. v. Thomas*, 101 Md. 501, 61 Atl. 293.

(c) Want of or defects in proofs of loss under a life or accident policy is waived by a denial of liability.—*Prudential Ins. Co. v. Devoe*, 98 Md. 584, 56 Atl. 809; *McElroy v. John Hancock Mut. Life Ins. Co.*, 88 Md. 137, 41 Atl. 112, 71 Am. St. Rep. 400. [Cited and annotated, see supra, § 558.]

(d) Want of and defects in the proofs of loss are waived by the insurer's denying liability on other grounds.—*Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289. [Cited and annotated in 15 L. R. A. 142, on agreements to arbitrate; in 47 L. R. A. (N. S.) 359, 360, 413, 427, 429, on arbitration agreements; in 15 L. R. A. (N. S.) 1073, on arbitration as condition precedent to action on policy]. *Maryland Ins. Co. v. Bathurst*, 5 G. & J. 159; *Franklin Fire Ins. Co. v. Coates*, 14 Md. 285. [Cited and annotated in 43 L. R. A. 664, on insurable interest in unfinished building under construction by contractor; in 52 L.



R. A. 333, 335, on when insurable interest must exist under fire policies.] *Franklin Fire Ins. Co. v. Chicago Ice Co.*, 36 Md. 102, 11 Am. Rep. 469. [Cited and annotated in 44 L. R. A. (N. S.) 149, 151, on provision that working of mechanics shall avoid insurance.] *Planters' Mut. Ins. Co. v. Deford*, 38 Md. 382. [Cited and annotated in 16 L. R. A. 36, on effect of agent's knowledge of falsity of statements in application; in 17 L. R. A. 273, on parol evidence to vary, etc., written contract; in 44 L. R. A. 850, on conclusiveness of proof of loss as against insured or beneficiaries; in 32 L. R. A. (N. S.) 457, on insurance: effect of false swearing in proofs of loss.] *Frederick County Mut. Fire Ins. Co. v. Deford*, 38 Md. 404; *Firemen's Ins. Co. v. Floss*, 67 Md. 403, 10 Atl. 139, 1 Am. St. Rep. 398. [Cited and annotated in 21 L. R. A. (N. S.) 444, on formation of partnership or change in personnel of firm as affecting change of title or ownership within provision of policy.] *Caledonian Ins. Co. v. Traub*, 80 Md. 214, 30 Atl. 904.

(e) A policy of insurance contained the condition that the insured should, when required, exhibit his bills of purchase or duplicates. Upon requisition therefore, he stated that the bills had been burned, and that he could not furnish duplicates. He also testified at the trial that he did not ask any one for duplicates. The company refused to pay the amount claimed by the insured, and his attorney notified the company of his intention to institute suit for the recovery of the claim. To this notification the agent replied by letter that he was instructed to say that the company would contest the payment of the claim, "in its present exaggerated form, under the terms and conditions of his policy, though we should have preferred an amicable compromise. \* \* \* If, however, you prefer litigation with this company, we shall contest the claim as above." The insured afterwards sued the company, and offered this letter in evidence to show waiver of further preliminary proof of loss. *Held*, that this letter was no waiver.—*Farmers' Fire Ins. Co. v. Mispelhorn*, 50 Md. 180. [Cited and annotated in 51 L. R. A. 702, 703, on conditions in policy as to keeping, producing, and preserving books and papers.]

(f) In an action on a policy of insurance, a letter to the insured from the secretary of the company expressly informed the insured that the proofs of loss furnished by him were wholly unsatisfactory as to the amount of his claim, and that, while the

company denied all responsibility by reason of misrepresentations as to title and property, they reserved all objections to the right of the insured to recover in any form. *Held*, not to amount to a waiver of defects in proof of loss.—*Citizens' Fire Ins. S. & L. Co. v. Doll*, 35 Md. 89, 6 Am. Rep. 360.

(g) Where a policy of insurance requires notice of loss by fire to be given forthwith, and the underwriters, on payment of the loss being demanded, replied that the proof of the amount of loss is unsatisfactory, that there has been a material concealment, and that all the rights of the insured are forfeited under a particular article of the policy, and add that they reserve all objections to a recovery in any form, and without intending to waive any of their rights under the policy, this answer cannot be construed as a waiver of the objection that notice of the loss was not given forthwith.—*Edwards v. Baltimore Fire Ins. Co.*, 3 Gill 176.

#### § 560.—Failure to object or to state ground of objection.

(a) On inquiry by the owner of a policy as to the sufficiency of proofs of death, insurer informed him that they were correct, but that it denied all liability, and that another claiming an interest in the policy was intending to sue thereon, and that, until this phase of the matter was settled, it could give no definite information. *Held*, that any objection that the proofs of death had been furnished too late had been waived as by negotiations with insured without objection to the proofs.—*McElroy v. John Hancock Mut. Life Ins. Co.*, 88 Md. 137, 41 Atl. 112, 71 Am. St. Rep. 400. [Cited and annotated, see supra, § 558.]

(b) Where insurer returned the proofs of death on the ground of incorrectness alone, and retained the ones furnished in lieu thereof for four months without objection, it waived the objection that they had been furnished too late.—*McElroy v. John Hancock Mut. Life Ins. Co.*, 88 Md. 137, 41 Atl. 112, 71 Am. St. Rep. 400. [Cited and annotated, see supra, § 558.]

(c) If, in case of damage to a building on which there is a policy of insurance, the notice and preliminary proof of loss served

by the insured upon the underwriters are defective, good faith on the part of these requires that they should so advise the insured.—*Franklin Fire Ins. Co. v. Chicago Ice Co.*, 36 Md. 102, 11 Am. Rep. 469. *Cited and annotated*, see *supra*, § 559.]

(d) A formal defect in the preliminary proof of loss by fire must be objected to by the insurers in reasonable time. Otherwise the right to object will be presumed to have been waived; more especially when the company bases a refusal to pay the loss upon other and totally distinct and independent grounds.—*Planters' Mut. Ins. Co. v. Deford*, 38 Md. 382. [*Cited and annotated*, see *supra*, § 559.] *Frederick County Mut. Fire Ins. Co. v. Deford*, 38 Md. 404.

(e) By one of the conditions in the policies issued to a firm the parties insured were required to render to the company, within a reasonable time, "a full and particular account of their loss, to be signed by their own hands, and verified by their oath and affirmation." Only one of the parties signed and verified the particulars. The company did not object to the sufficiency of the particulars until after action brought. *Held*, that they had waived any objection to the sufficiency of the particulars.—*Firemen's Ins. Co. v. Floss*, 67 Md. 403, 10 Atl. 139, 1 Am. Rep. 398. [*Cited and annotated*, see *supra*, § 559.]

(f) When the president of an insurance company, objecting to paying a loss, being asked what further proof of the loss he required, referred to the form in the policy, it cannot be considered as a waiver of such further proof.—*Spring Garden Mut. Ins. Co. v. Evans*, 9 Md. 1, 66 Am. Dec. 30.

#### § 561.— Adjustment of loss and negotiations for settlement.

(a) It is sufficient evidence of waiver of the condition of a fire policy for furnishing proofs of loss that insured was directed by B., the insurer's adjuster, after he had visited the scene of the fire, to meet him and D., the adjuster of another company, at D.'s office; that after doing so and discussing the loss, D. told him to make out a list of furniture destroyed, and B. told him he would hear from him; that he was then required, at the instance of B., to make a statement under oath to the fire marshal;

and that after he had thus furnished B. all the information required, and knew that he was suspected of having set the fire. B. again told him, at the fire marshal's office, that he would hear from him; he thus having every reason to believe that nothing more would be required of him, and that he had only to wait till the insurer concluded to either settle the loss or deny liability.—*Bakhaus v. Caledonian Ins. Co.*, 112 Md. 676, 77 Atl. 310.

(b) By proposing to settle a claim under a policy, insurer waives an objection that the proofs of death were not furnished in time.—*McElroy v. John Hancock Mut. Life Ins. Co.*, 88 Md. 137, 41 Atl. 112, 71 Am. St. Rep. 400. [*Cited and annotated*, see *supra*, § 558.]

(c) It may be inferred that an insurance company denied its liability on grounds other than absence of the preliminary proof of loss, and therefore waived such proof, where it offered to pay insured a certain sum in settlement of what it conceded to be due, and on rejection of this offer demanded appraisal and arbitration under the terms of the policy, which was entered on, and then offered to pay the amount of the award.—*Caledonian Fire Ins. Co. v. Traub*, 86 Md. 86, 37 Atl. 782. [*Cited and annotated* in 15 L. R. A. (N. S.) 1062, 1072, on arbitration as condition precedent to action on policy.]

(d) Where one of the issues was waiver of proofs of loss, and there was evidence of waiver, a charge was not erroneous which authorized the jury to find such waiver, if defendant was notified of the loss, and its agents took possession of the property, and retained it for 19 days, and it afterwards offered to pay plaintiffs the amount of an award, and denied its liability on other grounds than the absence of proof of loss.—*Caledonian Ins. Co. v. Traub*, 80 Md. 214, 30 Atl. 904.

#### § 562.— Payment of loss.

### XV. ADJUSTMENT OF LOSS.

#### Cross-References.

Adjustment as waiver of notice and proof of loss or of defects therein or objections thereto, see *ante*, § 561.

Mutual benefit insurance, see *post*, § 792.

Adjustment as liquidated damages or penalty, see "Damages," § 78.

Collateral attack on award, see "Arbitration and Award," § 79.

False affidavit by insured as perjury, see "Perjury," § 5.

Necessity that agreement to settle loss should be in writing, see "Frauds, Statute of," § 131.

Parties to suit to set aside award, see "Arbitration and Award," § 78; "Parties," § 25.

Representation of corporation by officers in submitting loss to appraisers, see "Corporations," § 418.

Validity of contract to refer or arbitrate claim under policy of insurance, see "Contracts," § 127.

§§ 563-565. (See Analysis.)

§ 566. Effect of adjustment.

*Cross-References.*

Settlement between parties, see post, § 579.

Sufficiency of evidence of adjustment, see post, § 665.

§ 567. Effect of provisions of policy for appraisal or arbitration.

*Cross-Reference.*

As condition precedent to action on policy, see post, § 612.

(a) Where the policy requires submission to arbitrators, if the parties cannot agree on the loss, each party must make a bona fide effort to select competent and disinterested arbitrators; but such arbitrators are not agents of the parties so as to make the latter responsible for their acts.—*Shawnee Fire Ins. Co. v. Pontfield*, 110 Md. 353, 72 Atl. 835. [Cited and annotated in 47 L. R. A. (N. S.) 413, 419, 420, 421, on arbitration agreements; in 28 L. R. A. (N. S.) 105, on arbitration as condition precedent to action on policy.]

§ 568. Demand of appraisal or arbitration.

*Annotation.*

Arbitration as condition precedent to action on insurance policy.—15 L. R. A. (N. S.) 1055; 28 L. R. A. (N. S.) 104, notes.

§ 569. Agreement for appraisal or arbitration.

§ 570. Appointment of appraisers or arbitrators.

§ 571. Appointment of umpire.

(a) The mere fact that the umpire was chosen after the appraisal was begun did not invalidate the award.—*Caledonian Ins. Co. v. Traub*, 83 Md. 524, 35 Atl. 13. [Cited and annotated in 4 L. R. A. (N. S.) 289, on effect of failure of insurance ar-

bitration; in 47 L. R. A. (N. S.) 390, 411, 413, 419, 420, 442, on arbitration agreements; in 15 L. R. A. (N. S.) 1062, 1072, on arbitration as condition precedent to action on policy.]

§ 572. Proceedings on appraisal or arbitration.

*Annotation.*

Right to introduce evidence before insurance appraisers.—47 L. R. A. (N. S.) 1191, note.

(a) An insurance policy provided that, in the event of a disagreement as to the amount of loss, the same should be ascertained by two disinterested appraisers; one to be selected by each party and the two selecting an umpire to whom differences should be submitted—the award of any two being final. After a loss under the policy, however, an appraisal agreement was entered into which provided that two named persons, together with a third person to be appointed by them as required by the policy, and who should act as umpire on matters of difference only, should appraise the property and determine the loss and damage. Held, that the umpire had a right to act only in case of disagreement, so that an award made by one of the appraisers and the umpire only, and covering the matters as to which the appraisers did not differ, did not conform to the submission and was not binding.—*Home Ins. Co. v. M. Schiff's Sons*, 103 Md. 648, 64 Atl. 63. [Cited and annotated in 47 L. R. A. (N. S.) 413, 419, 444, on arbitration agreements; in 15 L. R. A. (N. S.) 1072, on arbitration as condition precedent to action on policy.]

(b) A fire policy provided that the loss should be determined by two appraisers, the company and the insured each selecting one, and that the two should select one umpire, to whom they should submit their differences if they failed to agree. Held, that where one of the appraisers ceased to act, and the appraisal was completed by the other appraiser and the umpire, the award was not in accordance with the policy.—*Caledonian Ins. Co. v. Traub*, 83 Md. 524, 35 Atl. 13. [Cited and annotated, see supra, § 571.]

§ 573. Expenses of proceedings on appraisal or arbitration.

### § 574. Validity and effect of appraisal or award.

#### Cross-Reference.

Modification of contract as to effect of award, see ante, § 144.

#### Annotation.

Effect of award under terms of policy upon mortgagee not a party thereto.—25 L. R. A. (N. S.) 740, note.

### § 575. Failure of appraisal or arbitration.

#### Annotation.

Effect of failure of arbitration.—4 L. R. A. (N. S.) 288, note.

(a) A fire policy provided that any loss, in the event of a disagreement as to the amount thereof, should be ascertained by appraisers, the insurer and insured each selecting one, and the two electing an umpire to whom they should refer their differences. It stipulated that no action on the policy should be sustained until after compliance by the insured with such requirement. On a disagreement as to the amount of a loss, the insurer and insured each appointed an appraiser. The two failed to agree on an umpire, though the appraiser appointed by the insured submitted two names for an umpire, and the other appraiser submitted one. After that disagreement no further attempts were made to proceed with the appraisal. There was evidence that the adjuster stated to the insured's attorney that the appraiser appointed by the insurer would resign, and that the insurer was considering whether another appraiser should be appointed, and that the adjuster would inform the attorney in a few days, which was never done. There was no evidence connecting the insured with the conduct of the appraiser appointed by him. *Held*, that the insured was not prevented from maintaining an action on the policy for the loss sustained.—*Connecticut Fire Ins. Co. v. Cohen*, 97 Md. 294, 55 Atl. 675, 99 Am. St. Rep. 445. [Cited and annotated in 47 L. R. A. (N. S.) 390, 411, 413, 419, on arbitration agreements; in 4 L. R. A. (N. S.) 291, on effect of failure of insurance arbitration; in 15 L. R. A. (N. S.) 1072, on arbitration as condition precedent to action on policy.]

(b) Where a policy provides that the loss shall be determined by appraisers, the company and the insured each selecting one, and the insured causes a failure of ap-

praisement, he cannot maintain an action on the policy.—*Caledonian Ins. Co. v. Traub*, 83 Md. 524, 35 Atl. 13. [Cited and annotated, see supra, § 571.]

### § 576. Estoppel or waiver as to adjustment or arbitration.

#### Annotation.

Denial or admission of liability.—15 L. R. A. (N. S.) 1073, note.

(a) Where a policy provides for payment within 90 days "after proof and adjustment" of loss, and also provides that in case of disputes the matter shall be settled by arbitration, but the underwriter has by his acts waived proof of loss, the insured's right of action accrues immediately, notwithstanding the clause as to arbitration.—*Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289. [Cited and annotated in 15 L. R. A. 142, on agreements to arbitrate; in 47 L. R. A. (N. S.) 359, 360, 413, 427, 429, on arbitration agreements; in 15 L. R. A. (N. S.) 1073, on arbitration as condition precedent to action on policy.]

§§ 577, 578. (See Analysis.)

### § 579. Settlement between parties.

#### Cross-References.

Effect of adjustment, see ante, § 566.

Release or discharge from liability, see post, § 603.

Discharge by accord and satisfaction, see "Accord and Satisfaction," § 17.

Effect of accord and satisfaction, see "Accord and Satisfaction," §§ 22, 24.

Requisites and effect of compromise in general, see "Compromise and Settlement."

## XVI. RIGHT TO PROCEEDS.

#### Cross-References.

Evidence as to right to proceeds, see post, § 663.

Mutual benefit insurance, see post, §§ 793, 795-797.

Rights of policy holders on insolvency of company, see ante, § 43; post, § 702.

Actionable deceit in procuring adjustment loss, see "Fraud," § 22.

Administration of decedents' estates as affected by proceeds of insurance, see "Executors and Administrators," §§ 46, 76, 86, 181, 528.

Adopted children, see "Adoption," § 21.

Appropriation of school funds for insurance of school property, see "Schools and School Districts," § 19.

Collection of life insurance as motive for homicide, see "Homicide," § 166.

Conclusiveness of judgment, see "Judgment," § 638.

Descent of proceeds of life insurance, see "Descent and Distribution," §§ 5, 8, 30, 95, 112.

Disposition of insurance by will, see "Wills," §§ 6, 482, 571.

Effect of amendment of pleading on right to default judgment in action against creditor assignee for excess over amount of debt, see "Judgment," § 102.

Effect of assignment by insured for benefits of creditors, see "Assignments for Benefit of Creditors," § 180.

Effect of relation of husband and wife, see "Husband and Wife," §§ 124, 147, 171, 184, 193, 199, 249, 274.

Equitable lien on proceeds, see "Liens," § 7.

Execution on proceeds, see "Execution," §§ 43, 364.

Exempting benefits to be paid by fraternal beneficiary association as denying the equal protection of the laws, see "Constitutional Law," § 249.

Exemption of proceeds of insurance on exempt personal property, see "Exemptions," § 57.

Exemptions of proceeds of insurance on homestead, see "Homestead," § 79.

Exemption of proceeds of life insurance from legal process, see "Exemptions," § 50.

Garnishment of proceeds, see "Garnishment," § 34.

Interest under insurance contract as subject to attachment, see "Attachment," § 57.

Interpleader by insurer, see "Interpleader," §§ 10, 11.

Landlord's right to insurance against loss of rent paid to tenant, see "Landlord and Tenant," § 192.

Liability of proceeds to transfer tax, see "Taxation," § 867.

Liability of underwriter of hull to contribute in general average, see "Shipping," § 195.

Life insurance payable to another as creating trust, see "Trusts," § 37.

Right of trustee in bankruptcy, see "Bankruptcy," §§ 143, 396.

Rights between vendor and purchaser as to application of proceeds received by vendor to payment of purchase price or to rebuilding, see "Vendor and Purchaser," § 199.

Rights of creditors to proceeds of insurance on property fraudulently conveyed, see "Fraudulent Conveyances," § 181.

Rights of husband or wife to policy on divorce, see "Divorce," § 249.

Rights of receiver, see "Receivers," § 67.

Testimony as to transactions with persons since deceased in action to determine, see "Witnesses," §§ 128, 129.

**§ 580. Policy payable to owner of property or interest insured.**

*Cross-Reference.*

Insurable interest in property, see ante, § 115.

(a) Where a land contract is fully performed after injury to the premises by fire, the vendee is entitled to the proceeds of in-

surance policies placed on the property prior to the date of the contract, though he has announced an intention to carry no insurance and to tear down the buildings.—*William Skinner & Sons Ship-Building & Dry-Dock Co. v. Houghton*, 92 Md. 68, 48 Atl. 85, 84 Am. St. Rep. 485. [Cited and annotated in 27 L. R. A. (N. S.) 238, as to who must bear loss from destruction or deterioration of realty before contract of sale completely performed by transfer of title.]

(b) As between the parties to a contract for the sale of land, which has been fully performed after the premises have been injured by fire, the proceeds of insurance policies placed on the property by the vendor belong to the vendee, and not to the vendor, since the relation between them is that of trustee and cestui que trust; the vendor being the trustee of the property for the vendee.—*William Skinner & Sons Ship-Building & Dry-Dock Co. v. Houghton*, 92 Md. 68, 48 Atl. 85, 84 Am. St. Rep. 485. [Cited and annotated, see supra.]

(c) A. and B. were joint and equal owners of a vessel, and B. had her insured in his own name to the amount of \$1,500, rating her value at \$2,500. Held, that the policy did not cover the interest of A., and that he could not recover any part of the insurance from B., on B.'s receiving it from the insurers.—*Garrell v. Hanna*, 5 H. & J. 412.

**§ 581. Policy payable to or for benefit of mortgagee of property insured.**

*Cross-References.*

Parties to action on policy, see post, § 624.

Payment to mortgagee as payment of mortgage debt, see "Mortgages," § 298.

*Annotation.*

Effect of breach of policy of insurance by mortgagor on rights of mortgagee.—18 L. R. A. (N. S.) 197; 25 L. R. A. (N. S.) 1226; L. R. A. 1915C, 758, notes.

Rights of mortgagee to benefit of insurance taken in the name of mortgagor.—25 L. R. A. 305, note.

Rights given by the attachment of a mortgage slip to an insurance policy.—25 L. R. A. 679, note.

(a) Where a fire policy was procured by insured, and entered as payable to the "mortgagee," in pursuance of a covenant in the mortgage, a few days after its issuance, with the sanction of the company, the mort-

gagee, though not specifically named, is the beneficiary in the policy, and may enforce the same.—*Farmers' Fire Ins. Co. v. Baker*, 94 Md. 545, 51 Atl. 184. [Cited and annotated in 19 L. R. A. (N. S.) 643, on effect of appointment of receiver for insured on fire insurance.]

(b) The firm of S. & H. bought of J. G. certain machinery on credit, and gave their notes for the price, secured by a deed of trust, executed to W. D. in March, 1851. In the deed of trust they agreed to insure the property to the amount of the debts secured by the deed. The property was insured, and all the notes but two secured by the deed were paid. In January, 1852, M. D. became a member of the firm, with full knowledge of the deed of trust, and the firm was thereafter styled as S., H. & Co. November 19, 1852, the property was burned. On the succeeding day M. D., in the name of the firm, assigned the policies of insurance then in force to A. S. and W. S., to secure payment of two notes, neither of which was then due,—one for cotton purchased by S., H. & Co. from A. S. and W. S., and the other for a note indorsed by the latter for a commission and afterwards paid by them. December 2d, S. and H. jointly assigned the money due on the policies to W. D., trustee, for the benefit of J. G., describing themselves as the acting partners of S., H. & Co. In an action of assumpsit by A. S. and W. S. against J. G., *held*, that the agreement contained in the deed of trust to insure for the benefit of J. G. secured to him the proceeds of any insurance when effected, and, when M. D. became a member of the firm with full knowledge of the agreement and obligation to insure for the benefit of J. G., any insurance effected by the new firm was equally effected by the lien of J. G., and M. D. could not divert it from that purpose.—*Giddings v. Seevers*, 24 Md. 363. [Cited and annotated in 9 L. R. A. (N. S.) 61, on assumption of debts on dissolution of partnership.]

#### § 582. Policy for benefit of parties interested in property insured.

##### Cross-References.

Assignees of policies, see post, §§ 593, 594.

Life or accident policies, see post, §§ 588-590.

Effect of tender by insured to party interested, see "Tender," § 26.

##### Annotation.

Rights of vendor and vendee to proceeds of insurance.—37 L. R. A. 150, note.

(a) The firm of S. & H. bought of J. G. certain machinery on credit, and gave their notes for the price, secured by a deed of trust, executed to W. D. in March, 1851. In the deed of trust they agreed to insure the property to the amount of the debts secured by the deed. The property was insured, and all the notes but two secured by the deed were paid. In January, 1852, M. D. became a member of the firm, with full knowledge of the deed of trust, and the firm was thereafter styled as S., H. & Co. November 19, 1852, the property was burned. On the succeeding day M. D., in the name of the firm, assigned the policies of insurance then in force to A. S. and W. S. to secure payment of two notes, neither of which was then due,—one for cotton purchased by S., H. & Co. from A. S. and W. S., and the other for a note indorsed by the latter for a commission and afterwards paid by them. December 2d, S. and H. jointly assigned the money due on the policies to W. D., trustee, for the benefit of J. G., describing themselves as the acting partners of S., H. & Co. In assumpsit by A. S. and W. S. against J. G., *held*, that W. S. and A. S. as general creditors, trusted to the personal credit of the firm alone, but J. G. relied also on the security of the insurance, and, if the assignment of the insurance to them were sanctioned, they would derive advantage from a fund to which they did not look, and J. G. would be deprived to that extent of that on which he specially relied.—*Giddings v. Seevers*, 24 Md. 363. [Cited and annotated, see supra, § 581.]

(b) Lumber furnished by the owner of a house was sent to the shop of the carpenter to be worked up for use, and while there was destroyed by fire. *Held*, that the carpenter had no interest in the proceeds of an insurance obtained by the owner upon the lumber for his own benefit.—*Eichelberger v. Miller*, 20 Md. 332. [Cited and annotated in 43 L. R. A. 665, on insurable interest in unfinished building under construction by contractor.]

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

**§ 583. Life or accident policy payable to insured, his representatives, or estate.**

*Cross-References.*

Assignees of policies, see post, §§ 593, 594.

Insurance of property, see ante, §§ 580-582.

Policies designating beneficiaries, see post, §§ 585-590.

Release by widow, see post, § 603.

Title to policy vesting in receiver, see "Receivers," § 67.

*Annotation.*

Widow's right to proceeds of insurance on deceased husband's life payable to himself or his executors or administrators.—35 L. R. A. (N. S.) 964, note.

Who are "legal representatives" within the meaning of life insurance policies.—30 L. R. A. 609; 32 L. R. A. (N. S.) 247, notes.

(a) An insurer cannot defeat a recovery on its policy by the legal owner on the ground that others have equities therein.—*McElroy v. John Hancock Mut. Life Ins. Co.*, 88 Md. 137, 41 Atl. 112, 71 Am. St. Rep. 400. [Cited and annotated in 50 L. R. A. 46, on life insurance as assets of bankrupt or insolvent; in 41 L. R. A. (N. S.) 286, as to when delay in notice or proof of death under insurance policy excusable.]

**§ 584. Life or accident policy designating beneficiary.**

*Cross-Reference.*

Designation of beneficiary of mutual benefit insurance, see post, §§ 773-778, 780-784.

**§ 585.— Rights of persons designated in general.**

*Cross-References.*

Construction of policy, see ante, § 156.

Right to intervene in action by creditor of insured, see "Parties," § 40.

*Annotation.*

Widow's right to year's support or allowance out of insurance money.—46 L. R. A. (N. S.) 788, note.

Right of children or representatives of deceased child to share in proceeds of policy of life insurance payable to "children."—41 L. R. A. (N. S.) 250, note.

Who are legal "heirs" to whom fund is payable.—3 L. R. A. (N. S.) 904, note.

Divorce as affecting wife's right to insurance upon husband's life.—50 L. R. A. 552, note.

Who are "heirs" within the meaning of life insurance policies.—30 L. R. A. 593, note.

**§ 586.— Vested interest of beneficiary.**

(a) The issue of an insurance policy, not reserving the power of divestiture, confers immediately a vested right on the beneficiary, which cannot be impaired by an act on insured's part without the beneficiary's consent.—*Preston v. Connecticut Mut. Life Ins. Co.*, 95 Md. 101, 51 Atl. 838. [Cited and annotated in 52 L. R. A. (N. S.) 690, on right of beneficiary as against insured or his estate to endowment insurance.]

**§ 587.— Change of beneficiary.**

*Cross-Reference.*

Beneficiary of mutual benefit insurance, see post, §§ 780-784.

**§ 588.— Surrender of policy and issue of new policy.**

**§ 589.— Death of beneficiary.**

*Cross-Reference.*

Under mutual benefit certificates, see post, § 785.

(a) The insurance company was not estopped to assert that the policy was payable to the mother's legal representatives and not to insured's, by its acceptance of premiums from insured after the receipt of letters from him requesting it to make the policy payable to his heirs; the company having had no power to make the change.—*Preston v. Connecticut Mut. Life Ins. Co.*, 95 Md. 101, 51 Atl. 838. [Cited and annotated, see supra, § 586.]

(b) A life policy, by its terms payable "to C., mother of said insured, or her legal representatives,"—no right of divestiture being reserved—confers a vested right on the beneficiary; and she having predeceased the insured, the policy was payable to her legal representatives on his death, and not to insured's estate.—*Preston v. Connecticut Mut. Life Ins. Co.*, 95 Md. 101, 51 Atl. 838. [Cited and annotated, see supra, § 586.]

(c) The fact that the policy provided that at the end of 20 years, if insured was then alive, the money would be paid to him, and that the application provided that, on the surrender of the policy, its surrender value would be paid him, was immaterial; neither contingency having happened.—*Preston v. Connecticut Mut. Life Ins. Co.*, 95 Md. 101, 51 Atl. 838. [Cited and annotated, see supra, § 586.]

(d) An objection that, though insured's mother had an insurable interest in his life, her legal representatives did not, held untenable.—*Preston v. Connecticut Mut. Life Ins. Co.*, 95 Md. 101, 51 Atl. 838. [Cited and annotated, see supra, § 586.]

#### § 590.—Rights of creditors.

##### Cross-Reference.

Creditors of beneficiary under mutual benefit insurance, see post, § 797.

##### Annotation.

Rights of creditors to reach option of insured to receive cash surrender value.

—16 L. R. A. (N. S.) 316, note.

Rights of creditors in endowment or ton-tine policies.—4 L. R. A. (N. S.) 456, note.

(a) A provision in a life insurance policy, declaring that the claim of any creditor as beneficiary or assignee thereunder shall not exceed the actual bona fide indebtedness of assured to such person, does not require a showing of such bona fide indebtedness by a creditor, where the controversy is not with the insurance company, but with other claimants, and where the company had disclaimed any interest in the controversy, and deposited the money for whosoever may be found entitled.—*Robinson v. Hurst*, 78 Md. 59, 26 Atl. 956, 44 Am. St. Rep. 266. [Cited and annotated in 30 L. R. A. 610, as to who are "legal representatives" within life policies; in 53 L. R. A. 354, on moral obligation as consideration; in 63 L. R. A. 859, on conflict of laws as to insurance contracts.]

(b) Deceased, who was a member of a certain firm applied to plaintiff, member of another firm, for a loan, assuring plaintiff of the solvency of his firm. Plaintiff loaned him the firm's money. Afterwards, deceased's firm failed, and plaintiff then made good the loss to his own firm on account of the loan. Deceased proposed taking out a policy on his life to cover the debts, and afterwards inclosed a policy to plaintiff properly assigned and accepted by the company, which deceased hoped plaintiff would receive, as the best security he could then offer. Held, that the loan was not for the benefit of plaintiff's firm, but a personal matter, and plaintiff was entitled, as against deceased's representatives, to the benefit of the indemnity afforded by such policy.—*Robinson v. Hurst*, 78 Md. 59, 26 Atl. 956, 44 Am. St. Rep. 266. [Cited and annotated, see supra.]

(c) Defenses that would be available to an insurance company, if sued on a policy, are not available to creditors of the insured, claiming the insurance moneys as against assignees of the policy, where the company voluntarily pays the money into court without setting up such defenses.—*Diffenbach v. New York Life Ins. Co.*, 61 Md. 370.

#### § 591. Life policy for benefit of creditor.

(a) A creditor who, in pursuance of a bona fide effort to secure the payment of his debt, insures the life of the debtor and takes the policy in his own name or for his own benefit, is entitled to the proceeds of the entire policy.—*Fitzgerald v. Rawlings Implement Co.*, 114 Md. 470, 79 Atl. 915.

#### § 591½. Indemnity insurance.

##### Cross-Reference.

Nature of remedy, see post, § 608.

#### § 592. Policy procured with money wrongfully obtained or stolen.

#### § 593. Assignee of policy before loss.

##### Cross-References.

Consent of insurer to assignment, see ante, § 207.

Delivery and acceptance of assignment, see ante, § 211.

Form and requisites of assignment, see ante, § 209.

Life or accident policies payable to insured, his representatives, or estate, see ante, § 583.

Policy for benefit of person interested in property insured, see ante, § 582.

Right to assign life policy, see ante, §§ 203, 204.

Validity of oral assignment, see ante, § 208.

(a) Where the assignee of an insurance policy has executed a power to another to collect the same, and a claim to such policy, of which the assignee was ignorant, is decreed to be prior to the assignment, the proceeds being inadequate to pay both, the expenses of collection, under the power, should not be first paid out of the fund, thereby, in effect, taking the same from the amount remaining to the assignee, but should be divided between him and the prior claimant, in proportion to the amounts received.—*Dickey v. Pocomoke City Nat. Bank*, 89 Md. 280, 43 Atl. 33; *Second Nat. Bank v. Same*, Id. [Cited and annotated in 39 L. R. A. (N. S.) 890, on effect of surrender of pledge upon rights of pledgee.]



(b) The mere fact that the assignee of an insurance policy gave security for costs to prevent the dismissal of suits on the policy does not give him any right to the proceeds against a prior assignee, who was not called on to assist in maintaining such suits.—*Dickey v. Pocomoke City Nat. Bank*, 89 Md. 280, 48 Atl. 33; *Second Nat. Bank v. Same*, Id. [Cited and annotated, see supra.]

(c) The beneficiary, who had joined the insured in an assignment of the policy, testified she was present when the assignment was prepared by one H.; that it was read over to her, and, as read, provided for her sharing in the proceeds. H., Q., and the assignee testified the assignment was read to the assignor as written, without such provision, and she signed it, and not a word was said of her having any interest in the proceeds. It was proved that Q., and not H., wrote the assignment. Others proved that insured stated the policy was assigned because he was not able to keep up the payments. The assignee paid the dues on the policy for seven years, until death of insured. Held, that the assignment as written was not impeached, and that the assignee was entitled to the whole fund.—*Clogg v. MacDaniel*, 89 Md. 416, 43 Atl. 795. [Cited and annotated in 3 L. R. A. (N. S.) 987, on validity of assignment of interest in life insurance to one paying premiums.]

(d) As provided by a policy of insurance, the sum due thereon at the insured's death was paid by the company to a trustee therein named for the benefit of the insured's daughters. One of these daughters had entered a home for incurables, and, in consideration of care and support during life, assigned to such home "all moneys, rights, credits, goods, chattels, and effects now belonging to me or to which I am in any way entitled," and agreed to assign any other property which she might receive or become entitled to. She died before her father. Held, that the home was entitled to such daughter's share of the money in the hands of the trustee.—*Hewlett v. Home for Incurables*, 74 Md. 350, 24 Atl. 324, 17 L. R. A. 445.

(e) An insurance policy, insuring A., and making "the loss, if any, payable to" B., is to be regarded as having been, at its in-

ception, assigned to B. with the assent of the company, and he is entitled to its benefit without procuring a transfer of the policy from A., assented to by the company, as in ordinary cases.—*National Fire Ins. Co. v. Crane*, 16 Md. 260, 77 Am. Dec. 289. [Cited and annotated in 28 L. R. A. (N. S.) 832, 917, 918, 919, on relief from mistake of law as to effect of instrument.]

(f) By the terms of an assignment of a life policy the assignee was to receive the proceeds, and, if other securities held by him were insufficient for the purpose, was to apply such proceeds to the satisfaction of his claims against the owner, and to pay over the residue, if any, to the assignor's wife. Held, that the title of the wife, after paying the claim of the assignee, was good.—*Harrison v. McConkey*, 1 Md. Ch. 34. [Cited and annotated in 49 L. R. A. 738, 741, on power of insured to destroy beneficiary's rights.]

#### § 594. Assignment of claim for loss.

##### Cross-References.

Assignment to and subrogation of insurer, see post, § 607.

Life or accident policy payable to insured, his representative or estate, see ante, § 583.

Policy for benefit of parties interested in property insured, see ante, § 582.

Agreement to pay indebtedness out of sum received from insurer as equitable assignment, see "Assignments," § 52.

Equitable assignment of sum less than amount due from insurer; see "Assignments," § 50.

(a) A. insured a shipment of shooks, and, after their arrival at their destination in a damaged condition, it was agreed that they should be sold at auction, and the loss should be adjusted. A. thereafter wrote to the agent of the insurance company, transferring to B. the settlement of the insurance; and on the latter the agent indorsed the words, "the net proceeds of sale of the within-named shooks would come in the usual course to Mr. A., but, in accordance with his request, I will arrange with the auctioneers to hold the amount for B.'s account." The loss on the shooks was determined by an adjuster, and thereafter the insurance company sued B., as guarantor, on a note of A., growing out of an independent transaction, and defendant proposed to set off against the claim the amount of the adjustment, which was alleged to

be due to defendant under the above assignment. *Held*, that the indorsement by the insurance company's agent did not recognize the right of the defendants to the sum found by the adjuster, but merely to the proceeds arising from the sale.—*Johnston v. Phoenix Ins. Co.*, 39 Md. 233.

## XVII. PAYMENT OR DISCHARGE, CONTRIBUTION, AND SUBROGATION.

### Cross-References.

Mutual benefit insurance, see post, §§ 798, 800, 801.

Payment of part of loss as ground of estoppel or waiver, see ante, §§ 399, 562. Accord and satisfaction, see "Accord and Satisfaction," §§ 10, 12, 16, 22.

Consideration for bond of indemnity to insurance company, see "Indemnity," § 4.

Discharge by novation in general, see "Novation," § 5.

Payment to ancillary administrator, see "Executors and Administrators," § 519.

Procuring payment of insurance by false pretenses, see "False Pretenses," §§ 23, 27, 49.

### § 595. Election to rebuild or replace property.

(a) Where a policy of insurance provided that the insurer's right to rebuild should be exercised within a reasonable time, and notice of intention to do so given within 30 days after proof of loss, defendant's motion (made subsequent to the passage of a decree reforming the contract of insurance, and requiring the defendant to pay the amount of the loss as fixed by the decree) to strike out so much of the decree as fixed the amount of the loss, and for permission to file a supplemental answer praying that it be permitted to rebuild the property, will be denied.—*Maryland Home Fire Ins. Co. v. Kimmell*, 89 Md. 437, 43 Atl. 764. [Cited and annotated in 67 L. R. A. 706, on retention of policy as waiver of mistake or fraud of insurer or agent.]

(b) An insurance policy on machinery bound the company to pay a certain sum, in case of damage or loss by fire, unless they "shall, within 30 days after proof of such damage or loss, furnish the insured with a like quantity of any or all of the said goods, and of the same quality as those injured by the fire, or shall make good the damage or loss by paying therefor," etc. *Held*, that under this policy the company had the right

to pay the damages in money, or repair within 30 days the old machinery, so as to make it as good as before the fire.—*Franklin Fire Ins. Co. v. Hamill*, 5 Md. 170. [Cited and annotated in 26 L. R. A. 855, on insurer's option to rebuild; in 20 L. R. A. (N. S.) 962, on effect of insurer's election to repair or replace insured property.]

(c) On an action on a fire policy conditioned that the insurer may within a fixed time make good the damage, tender of performance after the accrual by election of a liability to repair is a good defense to an action on the policy.—*Franklin Fire Ins. Co. v. Hamill*, 5 Md. 170. [Cited and annotated, see supra.]

### § 596. Place of payment.

### § 597. Time of payment.

#### Cross-Reference.

Penalty for failure to pay within specified time as denying the equal protection of the laws, see "Constitutional Law," § 247.

### § 598. Interest on amount of loss.

(a) Where a life policy provided for payment on the receipt and approval of the proofs of death, interest on the amount due on the policy must be calculated from the date of the receipt and approval of the proofs of death, and not from the date of the death of insured.—*Crook v. New York Life Ins. Co.*, 112 Md. 268, 75 Atl. 388.

(b) Where a fire policy provides that, when an appraisal has been required, the award of the appraisers must be furnished to the company before the loss becomes payable, an irregular and illegal award by appraisers does not affect the right of the insured to recover interest upon the loss after the time fixed by the policy for payment, in case there is no appraisal.—*Home Ins. Co. v. M. Schiff's Sons*, 103 Md. 648, 64 Atl. 68. [Cited and annotated in 47 L. R. A. (N. S.) 418, 419, 444, on arbitration agreements; in 15 L. R. A. (N. S.) 1072, on arbitration as condition precedent to action on policy.]

### § 599. Mode and sufficiency of payment.

#### Cross-Reference.

What constitutes acceptance of draft in payment, see "Payment," § 18.

(a) Where a contract for the sale of land has been fully performed after the premises have been injured by fire, and the proceeds of an insurance policy placed on the

property by the vendor have been collected by him as trustee for the vendee, the latter cannot hold the company liable for paying the money over.—*William Skinner & Sons Ship-Building & Dry-Dock Co. v. Houghton*, 92 Md. 68, 48 Atl. 85, 84 Am. St. Rep. 485. [Cited and annotated in 27 L. R. A. (N. S.) 233, as to who must bear loss from destruction or deterioration of realty before contract of sale completely performed by transfer of title.]

(b) By the terms of the assignment of a life insurance policy the assignee was to receive the proceeds, and, if other securities held by him were insufficient for that purpose, to apply the same to the satisfaction of his claims against the assignor, and to pay over the residue, if any, to the wife of the latter. Held, that this was such a consummated transfer and delivery of the policy as to take from the assignor the legal power and dominion over it, and authorized the company to pay the money to the assignee without the interposition of the administrator of the assignor.—*Harrison v. McConkey*, 1 Md. Ch. 34. [Cited and annotated in 49 L. R. A. 788, 741, on power of insured to destroy beneficiary's rights.]

#### § 600. Effect of payment.

##### Cross-References.

Payment to mortgagee as payment of mortgage, see "Mortgages," § 298.  
Reduction of damages, see "Damages," § 64.

#### § 601. Recovery of payment.

#### § 602. Damages for refusal of payment.

##### Cross-Reference.

Mutual benefit insurance, see post, § 800.

#### § 603. Release or discharge from liability.

##### Cross-References.

See "Accord and Satisfaction," §§ 17, 24.  
Mutual benefit insurance, see post, § 801.  
Settlement between parties, see ante, § 579.

(a) The liability of the shipowner to the shipper for the negligence of the master and crew cannot avail the insurer as a defense.—*Georgia Ins. & Trust Co. v. Dawson*, 2 Gill 365.

#### § 604. Contribution between insurers.

##### Cross-References.

Effect of other insurance on extent of liability of insurer, see ante, §§ 479, 504.  
Decisions of state courts as authority in federal courts, see "Courts," § 372.

Power of federal court to restrain proceeding in state court to determine liability of insurers, see "Courts," § 508.

(a) Where there are several policies of insurance, each stipulating to pay the proportion of loss which the amount insured by it bears to the whole amount insured on the property in all the policies, the contracts are independent, and each insurer binds itself to pay its own proportion, without regard to what may be paid by others, and no right of contribution exists in favor of either of them.—*Hanover Fire Ins. Co. v. Brown*, 77 Md. 64, 25 Atl. 989, 27 Atl. 314, 39 Am. Rep. 386.

(b) The right to contribution in insurance is based upon the concurrence of the policies, and it is necessary that the several insurers should be bound with equal certainty and in the same sense for the same loss.—*Baltimore Fire Ins. Co. v. Loney*, 20 Md. 20. [Cited and annotated in 52 L. R. A. 343, on when insurable interest must exist under fire policies.]

(c) If two insurers be sued, and the first pay the whole loss upon a judgment against them, the second suit may be carried on against the second insurer for the benefit of the first.—*Whiting v. Independent Mut. Ins. Co.*, 15 Md. 297. [Cited and annotated in 23 L. R. A. 121, on payment by volunteer or stranger.]

#### § 605. Subrogation of insurer.

##### Cross-References.

Forfeiture of policy by acts or stipulations impairing right of subrogation, see ante, § 333.  
Effect of contract exempting railroad company from liability for fire, see "Railroads," § 469.  
Rights of insurer on payment of loss arising from injuries to servant, see "Master and Servant," § 341.  
Sufficiency of consideration for contract by insured to prosecute for himself and insurer, action against company causing loss, see "Contracts," § 54.

#### § 606.— On payment of loss in general.

##### Cross-Reference.

Effect of insurance on right of insured to recover damages against person causing loss, see "Damages," § 64.

##### Annotation.

Right of insurer which has paid the loss as against insured who has recovered against or settled with third persons responsible for the loss.—41 L. R. A. (N. S.) 719, note.  
Right of life or accident insurance com-

pany to subrogation.—18 L. R. A. (N. S.) 211, note.

Right of insurer to subrogation to mortgage on payment of mortgage debt from proceeds of insurance on mortgagee's interest.—3 L. R. A. (N. S.) 79, note.

Right of insurer who has paid a loss to maintain action against the party causing the loss.—2 L. R. A. (N. S.) 922, note.

(a) Where one who suffered loss by fire recovered from the company whose negligence caused it \$9,000 for loss of goods, and \$9,000 for interruption of business, insurance companies which had previously settled with insured for \$17,360 could hold him only for pro rata shares of \$9,000, since that was all he recovered for loss on the property insured.—*Svea Assur. Co. v. Packham*, 92 Md. 464, 48 Atl. 359, 52 L. R. A. 95. [Cited and annotated in 27 L. R. A. (N. S.) 635, on right of attorney taking case on contingent fee or percentage to implied or equitable lien on fund recovered; in 41 L. R. A. (N. S.) 722, on right of insurer against insured who has received compensation from third persons responsible for loss.]

(b) Where the party causing a fire paid the judgment recovered against him for loss occasioned by it to the owner of goods burned, a bill by an insurance company, which had paid the loss, to compel insured to pay the amount of the judgment into court, was properly dismissed, in the absence of fraud on the part of insured.—*Svea Assur. Co. v. Packham*, 92 Md. 464, 48 Atl. 359, 52 L. R. A. 95. [Cited and annotated, see supra.]

(c) Where one who suffered loss by fire agreed with his attorneys to give them 30 per cent. of what they would recover against a certain gas company whose negligence caused the loss, and the insurance companies who settled with such insured after suit brought knew of the arrangement and made no objection thereto, the insured could rightly retain such per cent. out of the judgment obtained against the gas company for the payment of his attorneys, and the balance alone could be claimed by the insurers.—*Svea Assur. Co. v. Packham*, 92 Md. 464, 48 Atl. 359, 52 L. R. A. 95. [Cited and annotated, see supra.]

(d) Insured was paid his loss by a certain fire by the companies insuring him. He thereafter settled a suit, brought against a gas company for negligence in causing the fire, for much less than he was paid by the insurance companies, but much more than they offered him at first in satisfaction of his loss. Such settlement was made in good faith, and with the full approbation of all the insurers assisting in the suit, being the majority of those interested. One of the insurers, which had refused to have any connection with the suit, was not notified that such settlement was contemplated. *Held*, that the insured was justified in settling the suit as he did.—*Svea Assur. Co. v. Packham*, 92 Md. 464, 48 Atl. 359, 52 L. R. A. 95. [Cited and annotated, see supra.]

(e) Where plaintiff held a fire policy issued by defendant, containing a clause by which plaintiff agreed to subrogate defendant to all plaintiff's right to recover against others if defendant should pay a loss to plaintiff, and plaintiff recovered from a third party for a loss occasioned by its tort, in which recovery the loss on the property covered by the policy in suit was not included, it is not necessary for defendant, in pleading the destruction of the right to subrogation as a defense to a suit on the policy, to allege payment or tender.—*Packham v. German Fire Ins. Co.*, 91 Md. 515, 46 Atl. 1066, 50 L. R. A. 828, 80 Am. St. Rep. 461.

(f) An insurer who pays a loss is subrogated to any claim which the insured may have against a third person for damages therefor.—*Georgia Ins. & Trust Co. v. Dawson*, 2 Gill 365.

(g) In an action brought by H., for the use of Y., against B., for a sum of money stated to be received for him by B. from the sale of a cargo of a vessel belonging to H., which had been captured, etc., *held*, that H., having caused the said cargo to be insured by Y. (for whose use the action was brought) and after the capture having abandoned the cargo to the insurer, and been paid by him, the action could not be maintained.—*Hollins v. Barney*, 3 H. & J. 437.

§ 607.— Under assignment of rights of insured.

**XVIII. ACTIONS ON POLICIES.**

*Cross-References.*

- Actions for premiums, see ante, § 188.
- Actions to recover premiums paid, see ante, § 198.
- Mutual benefit insurance, see post, §§ 802-834.
- On reinsurance contract, see post, § 686.
- Remedies and proceedings on insolvency of company, see ante, § 64.
- Election of remedy, see "Election of Remedies," § 3.
- Joinder of causes of action, see "Action," §§ 38, 47, 50.
- Judgment on pleadings, see "Pleading," § 349.
- Materiality of false testimony as affecting liability for perjury, see "Perjury," § 11.
- Production and inspection of writings, see "Discovery," §§ 82, 96.
- Prosecution of suit by indemnity insurance company on behalf of indemnitee as champertous, see "Champerty and Maintenance," § 4.
- Recovery on assumpsit, see "Assumpsit, Action of," § 6.
- Restraining action on policy on ground of fraud, see "Injunction," § 26.
- Right of action by foreign administrator, see "Executors and Administrators," § 524.
- Splitting cause of action, see "Action," § 53.
- State laws as rules of decision in federal courts, see "Courts," § 359.

§ 608. Nature and form of remedy.

*Cross-References.*

- Settlement between parties, see ante, § 579.
- Contract or tort, see "Action," § 27.
- Enforcement in action to reform policy, see "Reformation of Instruments," § 47.

*Annotation.*

- Right to maintain single suit in equity to enforce separate liability of members of an insolvent insurance association.—33 L. R. A. (N. S.) 1057, note.
- Validity of requirement by mutual benefit society that remedies within the order must be exhausted before resort to the civil courts.—8 L. R. A. (N. S.) 916, note.
- Distinction between action at law and suit in equity where insurer or its agent was guilty of fraud, and policy was retained.—67 L. R. A. 744, note.

- (a) Where a firm consisting of two members obtains insurance by a policy under seal, which provides for its renewal as a specialty so long as premiums continue to be paid thereon, and the firm subsequently introduces another member, but without

changing its name, the original firm cannot maintain assumpsit for the loss, though after the renewal of the policy.—*Firemen's Ins. Co. v. Floss*, 67 Md. 403, 10 Atl. 139, 1 Am. St. Rep. 398. [Cited and annotated in 21 L. R. A. (N. S.) 444, on formation of partnership or change in personnel of firm as affecting change of title or ownership within provision of policy.]

(b) Where a policy under seal is issued which expressly declares that it shall continue only for one year, an action of assumpsit may be maintained on a renewal receipt; it being regarded as a distinct parol contract of insurance, referring to and incorporating the terms of the original policy.—*Firemen's Ins. Co. v. Floss*, 67 Md. 403, 10 Atl. 139, 1 Am. St. Rep. 398. [Cited and annotated, see supra.]

§ 609. Remedy on Lloyds policies.

*Cross-References.*

- Evidence of value, see post, § 660.
- Judgment, see post, §§ 672, 673.
- Limitations, see post, § 622.
- Pleading, see post, §§ 628, 640, 645.
- Process, see post, § 626.

*Annotation.*

- Actions on Lloyd's policies of insurance.—55 L. R. A. 193, note.

§ 610. Statutory provisions.

*Cross-References.*

- Costs and attorney's fees, see post, § 675.
- Validity of law providing that in suits on policies defendant shall not deny the value of the property as stated in the policy, see "Constitutional Law," § 190.

§ 611. Grounds of action.

(a) A beneficiary under a life policy has no right of action for damages resulting from the making by the insurance company of illegal assessments on insured, its failure to set apart a reserve fund, or to place insured in a particular class, etc.; the beneficiary being entitled only to what can be realized under the policy.—*Price v. Mutual Reserve Life Ins. Co.*, 102 Md. 633, 62 Atl. 1040, 4 L. R. A. (N. S.) 870. [Cited and annotated in 14 L. R. A. (N. S.) 1111, on remedy on insurer's repudiation of contract.]

§ 612. Conditions precedent in general.

*Cross-References.*

- Effect of failure to give timely notice in general, see ante, § 539.

Necessity of notice and proof of loss in general, see ante, §§ 535, 536.

Restoration of money received in accord and satisfaction as prerequisite to action for balance, see "Accord and Satisfaction," § 22.

(a) Until compliance by the insured with a demand for books of accounts, bills, etc., made under the provisions of the policy, or until a showing that compliance was impossible, *held*, that he could not maintain an action on the policy.—*Mutual Fire Ins. Co. v. Pickett*, 117 Md. 688, 83 Atl. 1097.

(b) Under a policy providing that, if the parties cannot agree upon the amount of the loss, insured and the company should each appoint an arbitrator, who should select a third, and the three shall determine the amount of the loss, if insured acts in good faith, and does not interfere with the appraisal, he is not responsible for the conduct of the appraisers, and if the appraisal fails because the arbitrators cannot agree upon an umpire within a reasonable time without insured's fault, he may sue on the policy, even though the appraisal has not been abandoned or waived by the company.—*Shawnee Fire Ins. Co. v. Pontfield*, 110 Md. 353, 72 Atl. 835. [Cited and annotated in 47 L. R. A. (N. S.) 413, 419, 420, 421, on arbitration agreements; in 28 L. R. A. (N. S.) 105, on arbitration as condition precedent to action on policy.]

(c) Where a fire policy provides for an appraisal by arbitrators in case of a disagreement as to the amount of loss, the failure of the appraisers to render a proper and legal award, without the fault of the insured, does not affect his right to maintain an action on a policy.—*Home Ins. Co. v. M. Schiff's Sons*, 103 Md. 648, 64 Atl. 63. [Cited and annotated in 47 L. R. A. (N. S.) 413, 419, 444, on arbitration agreements; in 15 L. R. A. (N. S.) 1072, on arbitration as condition precedent to action on policy.]

(d) The condition in a policy requiring preliminary proofs is a condition precedent to a suit thereon.—*Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289. [Cited and annotated in 15 L. R. A. 142, on agreements to arbitrate; in 47 L. R. A. (N. S.) 359, 360, 413, 427, 429, on arbitration agreements; in 15 L. R. A. (N. S.) 1073, on arbitration as condition precedent to action on policy.]

## § 613. Demand.

*Cross-References.*

Pleading, see post, § 629.

## §§ 614-616. Defenses.

*Cross-References.*

Acceptance of tender and effect thereof, see "Tender," § 27.

Conveyance to insured to defraud creditors as defense, see "Fraudulent Conveyances," § 179.

Law providing that defendant shall not deny the value of the property as stated in the policy as abridging the privileges and immunities of citizens, see "Constitutional Law," § 206.

Right of insurance company to question ownership of property because transfer violated statute of frauds, see "Fraud, Statute of," § 143.

Violation of anti-trust law, see "Monopolies," § 23.

(a) Insurer of rents precluded itself from claiming that no rent was due under the policies sued on by paying into court money claimed to cover its liability.—*Palatine Ins. Co. v. O'Brien*, 109 Md. 100, 71 Atl. 775; *O'Brien v. Palatine Ins. Co.*, Id. [Cited and annotated in 23 L. R. A. (N. S.) 123, on rent insurance.]

## § 616½. Conclusiveness of adjudication in action against insured.

## § 617. Jurisdiction.

*Cross-References.*

What constitutes "doing business" so as to render company subject to jurisdiction of state court, see ante, § 16.

Ancillary jurisdiction, see "Courts," § 27.

Concurrent and conflicting jurisdiction of state and federal courts, see "Courts," § 493.

Of federal courts as dependent on amount in controversy, see "Courts," § 328.

Of federal courts as dependent on diverse citizenship, see "Courts," § 307.

Of marine insurance, see "Admiralty," § 10.

Removal of cause from state to federal court, see "Removal of Causes," §§ 19, 74, 86.

(a) Under act 1876, c. 106, § 30, providing that a foreign insurance company must, as a condition precedent to doing business within the state, designate an agent to receive service of process, and act 1868, c. 471, § 211, provided that any nonresident may sue a foreign corporation doing business in a state, where the cause of action has arisen within the state, and process may be served as provided therein, a foreign insurance company may be sued in Maryland by a resident of Virginia on a policy issued by it through its agency in Maryland, though

before loss it has withdrawn its agency and ceased to do business within the state.—*Ben Franklin Ins. Co. v. Gillett*, 54 Md. 212. (See Code 1911, art. 23, §§ 92, 182; art. 75, § 23.) [Cited and annotated in 67 L. R. A. 732, on retention of policy as waiver of mistake or fraud of insurer or agent; in 70 L. R. A. 527, 535, 546, on nonresident's right to sue foreign corporation; in 28 L. R. A. (N. S.) 788, 832, 834, on relief from mistake of law as to effect of instrument.]

#### § 618. Venue.

(a) Under act 1896, c. 367 (Code 1888, art. 75, § 22A), entitled "An act providing for suits against fire insurance companies in localities where they have local agents," declaring that, when a fire insurance company has an agent in a county resident therein in which a building insured by it is burned, suit may be brought against it "in any court of competent jurisdiction, as other suits are brought," by service on such resident agent, suit may be in courts of counties where local agents reside.—*Henderson v. Maryland Home Fire Ins. Co.*, 90 Md. 47, 44 Atl. 1020. (See Code 1911, art. 75, § 23.)

#### § 619. Special statutory limitations.

#### § 620. Limitations by provisions of policy.

##### Cross-Reference.

Effect of provisions on right to reform policy, see "Reformation of Instruments," § 32.

#### § 621.— Time before action can be maintained.

(a) Where a policy of insurance contained a clause providing for payment of losses within 60 days after proof, and the conditions of the policy were complied with, and payment demanded within the time limited, and the loss was admitted by the company, and payment offered of what it assumed to be the amount of its liability, but in fact a less sum, and it refused to pay more, the condition of the time of payment was held to have been waived, and the sum for which the company was bound to have become due and recoverable.—*Baltimore Fire Ins. Co. v. Loney*, 20 Md. 20. [Cited and annotated in 52 L. R. A. 343, on when insurable interest must exist under fire policies.]

(b) Where a policy provides for payment in 90 days on "proof and adjustment" of

loss, but the underwriter has by his acts waived proof of loss, the insured's right of action accrues immediately.—*Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289. [Cited and annotated, see supra, § 612.]

#### § 622.— Time within which action must be brought.

##### Cross-References.

On adjustment of loss, see ante, §§ 566, 574, 579.

On Lloyds policies, see ante, § 609.

Computation of time, see "Time," § 10.

##### Annotation.

Stipulation limiting time for suit on insurance policy—when begins to run.—47 L. R. A. 697; 48 L. R. A. (N. S.) 906, notes.

#### § 623.— Waiver of limitation.

##### Annotation.

Waiver of short limitation period in policy by efforts at compromise extending beyond its termination.—9 L. R. A. (N. S.) 654, note.

(a) A policy insuring against accident and disease provided that "legal proceedings for recovery hereunder may not be brought before the expiration of three months from date of filing final proofs. \* \* \*" Insured filed a claim for injury occasioned by a hernia, the result of an accident. Held, that the company by refusing to treat the hernia as an accident, but insisting that it should be treated as a disease, and made subject to the limitation attached by the policy to disability arising from that cause, waived the provision as to the time before bringing suit, and an action brought before the time specified was not premature.—*Dulany v. Fidelity & Casualty Co.*, 106 Md. 17, 66 Atl. 614. [Cited and annotated in 23 L. R. A. (N. S.) 359, on construction and effect of condition that assured be confined to house.]

(b) Where, in an action on an insurance policy, the evidence shows a lack of good faith and frank dealing on part of the insurance company and an intent not to pay the loss, the insurance company will be deemed to have waived the condition in the policy that no suit shall be brought within 60 days after the loss insured against.—*Continental Ins. Co. v. Reynolds*, 107 Md. 96, 68 Atl. 277; *Springfield Fire & M. Ins. Co. v. Reynolds*, 107 Md. 107, 68 Atl. 281.

(c) A provision, in a policy of life insurance, that no suit shall be brought after

six months from the death of the insured, will not bar an action where the beneficiary and the company have agreed on the amount to be paid, and the latter has agreed to pay it as soon as received from the home office.—*Metropolitan Life Ins. Co. v. Dempsey*, 72 Md. 288, 19 Atl. 642. [Cited and annotated in 48 L. R. A. 708, 712, as to when contractual limitation of time for suit on policy begins to run; in 53 L. R. A. 196, on innocent misrepresentations as to health of insured having undiscovered disease.]

## § 624. Parties.

### Cross-References.

Consent of mortgagee for mortgagor to sue as condition precedent, see ante, § 612.

Persons entitled to proceeds, see ante, §§ 580-594.

Action by agent of insured as trustee of express trust, see "Parties," § 7.

Action by heirs, see "Descent and Distribution," § 91.

Action by legatee of interest in policy, see "Wills," § 746.

Bringing in new parties, see "Parties," § 51.

Bringing suit in name of real party in interest, see "Parties," § 6.

Defects and objections, see "Parties," § 78.

Intervention, see "Parties," § 40.

Joinder of insurer and insured in action to recover for property negligently destroyed by fire, see "Parties," §§ 16, 20.

Rights in life policy passing to trustee in insolvency, see "Insolvency," § 55.

Statutory proceedings for substitution of claimant, see "Interpleader," § 40.

Trustee in bankruptcy, see "Bankruptcy," § 299.

### Annotation.

Who may maintain action for proceeds of policy taken in mortgagor's name for benefit of mortgagee.—25 L. R. A. 306, note.

(a) Where a fire insurance company is sued on a policy by a mortgagee to whom the policy was made payable, the insured is not ordinarily an indispensable party.—*Farmers' Fire Ins. Co. v. Baker*, 94 Md. 545, 51 Atl. 184. [Cited and annotated in 19 L. R. A. (N. S.) 643, on effect of appointment of receiver for insured on fire insurance.]

(b) Where a fire insurance company is sued on a policy by a mortgagee to whom the policy was made payable, an allegation in the company's answer that complainant's name does not occur in the policy, and that there is no privity of contract between it and the complainant, does not raise the question of defect of parties, for failing to

make the insured a party.—*Farmers' Fire Ins. Co. v. Baker*, 94 Md. 545, 51 Atl. 184. [Cited and annotated, see supra.]

(c) Where a firm consisting of two members obtained insurance by a policy under seal, which provided for its renewal as a specialty on payment of premiums and the firm subsequently introduced another member, but without changing his name, the incoming member of the firm, not being a party to the deed, could not be joined as a plaintiff in an action thereon.—*Fireman's Ins. Co. v. Floss*, 67 Md. 403, 10 Atl. 139, 1 Am. St. Rep. 398. [Cited and annotated in 21 L. R. A. (N. S.) 444, on formation of partnership or change in personnel of firm as affecting change of title or ownership within provision of policy.]

(d) In an action on a fire insurance policy providing for contribution between different policies covering the goods, and limiting the insurer's liability to a pro rata payment, it must be determined whether or not other policies claimed to cover the goods do so, by construing the policies or otherwise, without regard to the fact that the companies issuing them are not parties to the action.—*Fire Ins. Ass'n v. Merchants' & Miners' Transp. Co.*, 66 Md. 389, 7 Atl. 905, 59 Am. Rep. 168. [Cited and annotated in 52 L. R. A. 331, 342, on when insurable interest must exist under fire policies; in 13 L. R. A. (N. S.) 154, on right to insurance taken in agent's name.]

(e) An insurance policy issued to A. read: "Loss, if any, payable to the Savings Bank of Baltimore, mortgagee." Held, that A. could, with the express written consent of the savings bank, sue on the policy in his own name.—*Coates v. Pennsylvania Fire Ins. Co.*, 58 Md. 172, 42 Am. Rep. 327. [Cited and annotated in 25 L. R. A. 307, on mortgagee's rights to insurance taken in mortgagor's name.]

(f) An application for insurance effected on the life of S. showed that the wife of S. was one of the contracting parties. He signed as the person whose life was insured, and she as the person for whose benefit the insurance was made. The covenant in the body of the policy was "to pay to S. at the time named, if he should be then living, and, if he should die previous thereto, to pay to his wife, C., or her legal representatives." The policy was executed by the company alone. Held, that the policy was to



be regarded as a deed poll, and, the covenant therein to pay to the wife being made directly with her, there could be no valid objection to her maintaining a suit upon it in her own name.—*Mutual Life Ins. Co. v. Stibbe*, 46 Md. 302. [Cited and annotated in 44 L. R. A. 849, 853, on conclusiveness of proof of loss as against insured or beneficiaries; in 15 L. R. A. (N. S.) 209, on provisions in policies against use of liquor.]

(g) Where a policy under seal, issued to the agents of the owner of the insured property, states that such agents, for and on account of the owner, "did make insurance and cause themselves to be insured," the owner may maintain a suit thereon in his own name.—*Maryland Ins. Co. v. Graham*, 3 H. & J. 62.

#### §§ 625-627. Process.

(a) Under Code 1904, art. 75, § 23, service of summons in an action on a fire policy on a local agent of the company was good, and equally as effective as if it had been served upon the president or one of the directors of the company, though the agent did not notify the company of the suit.—*Girard Fire & Marine Ins. Co. v. Bankard*, 107 Md. 538, 69 Atl. 415. (See Code 1911, art. 75, § 23.)

(b) Suit being brought against a fire insurance company in the proper county, defect in service of process, in that instead of being on the resident agent it is on an officer in another county, does not deprive the court of jurisdiction, but must be taken advantage of by motion to quash the writ.—*Henderson v. Maryland Home Fire Ins. Co.*, 90 Md. 47, 44 Atl. 1020.

(c) Under act 1878, c. 106, allowing foreign companies to do business within the state on certain conditions, among others that they shall file with the insurance commissioner a power of attorney appointing a resident agent to receive service of process, and stipulating that, in case of the death or absence of such agent, service may be made on the insurance commissioner, service on the local agent of a company which has filed such a power, and mailing a copy of the process to the general agent authorized to receive service, are insufficient, though act 1868, c. 471, § 211, authorizes service on any agent of a foreign corporation.—*Oland v. Agricultural Ins. Co.*,

69 Md. 248, 14 Atl. 669. (See Code, art. 23, §§ 92, 182; art. 75, § 23.) [Cited and annotated in 23 L. R. A. 498, as to who may be served with process in suit against foreign corporation; in 5 L. R. A. (N. S.) 299, on exclusiveness of statutory service on person designated by foreign corporation.]

#### § 628. Declaration, complaint, or petition.

##### Cross-References.

Cure of defects by pleading of adverse party, see "Pleading," § 408.

Pleading in justice's court, see "Justices of the Peace," § 101.

Verification of pleadings, see "Pleading," § 291.

#### § 629.— Form and requisites in general.

(a) Where, in an action on a policy insuring the fidelity of a bank cashier, agreeing to indemnify the bank against pecuniary loss, resulting from his dishonest conduct amounting to embezzlement or larceny, plaintiff, instead of charging in general terms the loss of money through the fraudulent and dishonest acts of the cashier, amounting to larceny, set out the particular acts by which the losses were sustained, the declaration would be demurrable unless the allegations sufficiently charged larceny; and where the declaration set out several alleged breaches consisting of money wrongfully paid by the teller of the bank at the instance of the cashier, but it was not charged that the teller was innocent of the larceny of which the cashier was claimed to have been guilty, or that the money taken and applied by the teller to the payment of the paper was taken in the presence of the cashier, nor, as to other breaches, was it charged that either the cashier or the teller took the money of the bank, neither of the breaches alleged charged larceny, and the declaration was therefore demurrable.—*Canton Nat. Bank v. American Bonding & Trust Co.*, 111 Md. 41, 73 Atl. 684.

(b) While it is not necessary in a suit on a bank cashier's fidelity bond to set out in a separate count each breach of the bond, the assignment of each breach must be perfect in itself and cannot be assisted by reference to other breaches.—*Canton Nat. Bank v. American Bonding & Trust Co.*, 111 Md. 41, 73 Atl. 684.

(c) Where a bank cashier's fidelity bond required defendant to pay such losses as

plaintiff sustained by reason of the dishonest acts of the cashier amounting to larceny, committed during the term and discovered during the term or within three months thereafter, a declaration failing to charge when the alleged fraudulent acts of the cashier were discovered was fatally defective.—*Canton Nat. Bank v. American Bonding & Trust Co.*, 111 Md. 41, 73 Atl. 684.

(d) A petition alleging past insurance upon certain described premises in a sum named, and the renewal of said policy for the same amount, and upon the same terms, agreements, covenants, and stipulations as were contained in said policy, for the further term of one year, is defective in not setting forth with sufficient fullness and clearness the provisions of the former policy, and which were to be inserted in the renewal policy.—*Mallette v. British-American Assur. Co.*, 91 Md. 471, 46 Atl. 1005. [Cited and annotated in 48 L. R. A. (N. S.) 321, 322, on terms and conditions of usual policy as affecting claim under oral insurance contract or for damages for breach of contract to issue policy.]

(e) A count charging that, on the demand of defendants, "plaintiff paid them a large sum of money as premiums or assessments on the policies, which they illegally and unlawfully took and used," does not set forth a cause of action on the policies, as it fails to state in what way the money was illegally taken and used.—*Pearce v. Watkins*, 68 Md. 534, 13 Atl. 376.

(f) Act 1868, c. 471, § 211, provides that suits may be brought in any court of Maryland against any foreign corporation holding or exercising franchises within the state, by a resident of Maryland, or by a plaintiff not a resident of Maryland when the cause of action has arisen or the subject of the action shall be situated in Maryland. A life policy was issued to a woman and her husband, purporting to agree to pay to the survivor of them, "at the company's office in the city of New York," an amount stated, on proof "of the death of either of the said A. and B., of the city of Washington, D. C." The declaration on this policy did not allege that the plaintiff was a resident of Maryland, nor that the cause of action arose in Maryland; but it did not appear in evidence that plaintiff was a non-resident of Maryland at the time the suit

was brought or that the contract was not made in Maryland. *Held*, that as, by suing a foreign corporation in a Maryland court, the plaintiff asserted her right to do so, either upon the ground of residence within the state at the time or that the suit was on a Maryland contract, the declaration was sufficient to justify the admission of the policy in evidence.—*Universal Life Ins. Co. v. Bachus*, 51 Md. 28. (See Code 1911, art. 23, §§ 92, 182; art. 75, § 23.)

(g) The amount claimed in an action on a policy of insurance is a liquidated sum, within the provisions of act 1864, c. 6, and may be verified by affidavit.—*Knickerbocker Life Ins. Co. v. Hoeske*, 32 Md. 317. (See Speedy Judgment Act, Balto. City Rev. Charter, §§ 312, et seq.; act 1914, c. 378, Code [vol. 3], art. 75, § 24, subs. 107.)

§ 630.—Insurable interest.

§ 631.—Setting forth or annexing policy and accompanying documents.

(a) Where a certificate of life insurance in a mutual company, and the application therefor, are not made part of the declaration by proferat, a motion in arrest of judgment for a variance between them and the declaration is properly overruled.—*Oriental Ins. Co. v. Glancey*, 70 Md. 101, 16 Atl. 391.

(b) Where a policy issued to the agents of the owner of the insured premises states that such agents, for and account of the owner, "did make insurance and cause themselves to be insured," etc., and the owner of the property, in a suit on the policy alleges that he, "according to the usage and custom of merchants, through and by his attorneys and agents, in his own name, did make insurance," etc., and further declares on the policy as made with him personally, there is no material variance.—*Maryland Ins. Co. v. Graham*, 3 H. & J. 62.

§§ 632-636.—(See Analysis.)

§ 637.—Assignment of policy.

(a) In an action of debt against an insurance company on a policy of insurance issued by the latter, guarantying to the bearer, on a day named, the sum of \$5,000, on presenting the same at the office of the company, it was *held*, on special demurrer to the declaration, in which the plaintiff

averred that he was the bearer of the policy, and that the same was presented on the day named, but was not paid, that the action might be maintained.—*Ellicott v. United States Ins. Co.*, 8 G. & J. 166.

§§ 638, 639. (See Analysis.)

§ 640. Plea, answer, or affidavit of defense.

*Cross-References.*

Privileged communications in pleading, see "Libel and Slander," § 38.

Verification, see "Pleading," § 291.

(a) In an action on a life policy, a plea alleging that insured voluntarily directed the cancellation of his policy, and suffered it to lapse, and that the causes of action alleged in the declaration were discovered by the plaintiff more than three years before the suit, was a sufficient plea of limitations.—*Price v. Mutual Reserve Life Ins. Co.*, 107 Md. 374, 68 Atl. 689.

(b) To a declaration in assumpsit upon an unsealed life insurance policy, neither a plea that the alleged policy was not the defendant company's deed, nor a plea non est factum, nor a plea non infregit conventionem, applies.—*Universal Life Ins. Co. v. Bachus*, 51 Md. 28.

§ 641. Replication or reply and subsequent pleadings.

*Cross-Reference.*

Departure in pleading, see "Pleading," § 180.

(a) In an action on an insurance policy, defendant answered alleging breach of condition as to additional insurance, to which plaintiff replied setting out that, at the time of the issuance of the policy sued on, defendant had notice that plaintiff had applied for additional insurance, and that the application therefor had been accepted. Held, that a rejoinder alleging that the terms of the policy prohibited additional insurance, unless indorsed on the policy, was bad as against a demurrer, since, if the facts in the replication were true, defendant was estopped to rely on its failure to indorse the additional insurance on the policy.—*Continental Ins. Co. v. Reynolds*, 107 Md. 96, 68 Atl. 277. [Cited and annotated in 16 L. R. A. (N. S.) 1226, on parol-evidence rule as to varying or contradicting written contracts, as affected by doctrine of waiver or estoppel of insurer.]

§ 642. Demurrer.

§ 643. Amended and supplemental pleadings.

*Cross-References.*

Amendment after limitations, see ante, § 622.

Setting up new or different causes of action, see "Pleading," § 248.

§ 644. Bill of particulars.

§ 645. Issues, proofs, and variance.

*Cross-References.*

Allowing plaintiff to prove waiver of terms of policy without alleging such waiver as denial of equal protection of the laws, see "Constitutional Law," § 249.

Allowing plaintiff to prove waiver of terms of policy without alleging such waiver as depriving defendant of his property without due process of law, see "Constitutional Law," § 305.

(a) Under the statute, the execution of a contract of insurance is a question of fact, which must be pleaded if the insurer desires to put the execution in issue.—*Williams v. New York Life Ins. Co.*, 122 Md. 141, 89 Atl. 97. (See Speedy Judgment Act, Balto. City Rev. Charter, §§ 312, et seq.; act 1914, c. 378, Code [vol. 3], art. 75, § 24, subs. 107.) [Cited and annotated in 52 L. R. A. (N. S.) 286, on conflict of laws as to insurance.]

(b) Evidence held not admissible to show that the fire policy sued on was not executed by the company where the pleadings admitted execution.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 116 Md. 422, 82 Atl. 372.

(c) Where, in an action on a fire insurance policy, the declaration averred that plaintiff was insured "for" a certain amount, while the policy stipulated "to" that amount, the variance was not material, and would not be regarded, since the declaration averred the number of the policy sued on, so that defendant was apprised of its provisions and could not be surprised by the proof.—*Mutual Fire Ins. Co. v. Ritter*, 113 Md. 163, 77 Atl. 388.

(d) In a suit on a fire insurance policy, it was proper to introduce in evidence, under the plea of non est factum, letters from defendant with reference to the loss, which admitted the issuance of the policy sued on.—*Mutual Fire Ins. Co. v. Ritter*, 113 Md. 163, 77 Atl. 388.

(e) Where, in a suit on a fire insurance policy the declaration averred sufficient facts to apprise defendant as to what policy was sued on, the application for the policy was admissible in evidence since the policy declared that such application should be a part of it, and defendant could not be surprised by such proof.—*Mutual Fire Ins. Co. v. Ritter*, 113 Md. 163, 77 Atl. 388.

(f) Where, in an action on an insurance policy, the policy was set out in the declaration according to its legal effect, it was properly admitted in evidence.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 113 Md. 430, 77 Atl. 378.

(g) Where, in an action on a life policy, the sole defense was that it had lapsed for nonpayment of a premium, the application for insurance, the report of the medical examiner, and the cause of insured's death, together with evidence defining a substandard policy and proof of why insurer refused to issue to insured a standard policy, and that insurer knew the condition of insured, were properly excluded.—*Crook v. New York Life Ins. Co.*, 112 Md. 268, 75 Atl. 388.

(h) Where insured in a policy which lapsed on November 5, 1907, paid interest on a loan in advance to April 5, 1908, and the policy pledged to secure the loan, which became due, according to the loan agreement, on the date the policy lapsed, was foreclosed by insurer on December 19, 1907, the loan was extinguished on the date of the foreclosure, and no interest could thereafter accrue thereon, and insurer held the unearned interest for the use of plaintiff, and it was recoverable with interest from that date, under the common counts in an action on the policy.—*Crook v. New York Life Ins. Co.*, 112 Md. 268, 75 Atl. 388.

(i) Where, in action on a life policy, the issue was whether the sum tendered as paid-up insurance after deductions of the loan on the policy was sufficient to satisfy the claim under the policy, and it appeared that insurer owed another sum for interest paid in advance to a date after the loan had matured, insured was entitled to recover it under the common counts in the declaration.—*Crook v. New York Life Ins. Co.*, 112 Md. 268, 75 Atl. 388.

(j) Under a count in a petition alleging a verbal agreement to insure, evidence of previous insurance, and of a verbal agreement to renew the same policy, will entitle plaintiff to recover.—*Mallette v. British-American Assur. Co.*, 91 Md. 471, 46 Atl. 1005. [Cited and annotated in 48 L. R. A. (N. S.) 321, 322, on terms and conditions of usual policy as affecting claim under oral insurance contract or for damages for breach of contract to issue policy.]

(k) An action on a fire policy conditioned to be void if other insurance is obtained without the written consent of the insurer necessarily involves, as a material issue, the validity of subsequent insurance.—*Sweeting v. Mutual Fire Ins. Co.*, 83 Md. 63, 84 Atl. 826, 32 L. R. A. 570.

(l) There is no variance between the complaint, in an action on the policy, and the policy, where there is no variation as to the parties, the obligation to pay, or the time when the payment became due, though the language employed in the complaint might be so general as to be bad on demurrer.—*Caledonian Ins. Co. v. Traub*, 80 Md. 214, 30 Atl. 904.

(m) Life certificates issued to an assignee of the policy by the defendant insurance company stated that they were payable to the assignee if living at the death of the insured, payment to be made within 90 days after proof of death. The complaint in an action by the assignee stated that the certificates were payable to plaintiff on the death of insured. Held a variance.—*Souder v. Home Friendly Soc.*, 72 Md. 511, 20 Atl. 137. [Cited and annotated in 3 L. R. A. (N. S.) 336, as to who are members of insured's "family"; in 3 L. R. A. (N. S.) 937, on validity of assignment of interest in life insurance to one paying premiums; in 6 L. R. A. (N. S.) 129, on validity of assignment to one without insurable interest in life.]

(n) Though the plaintiff declares as for a total loss, he may, if the evidence will justify it, recover as for a partial loss.—*Barney v. Maryland Ins. Co.*, 5 H. & J. 139.

#### § 646. Presumptions and burden of proof.

(a) The burden is on an insurer to show the falsity of statements and answers in the application, and that they were material to the risk.—*Forwood v. Prudential Ins. Co.*, 117 Md. 254, 83 Atl. 169.

(b) Where an insurer has proved the falsity of representations in the application which was signed by the insured, and contained a declaration that all statements and answers were true, and an agreement that they should constitute a part of the contract, the burden is on those claiming under the policy to show that the answers contained in the application were not the answers given by the insured.—*Forwood v. Prudential Ins. Co.*, 117 Md. 254, 83 Atl. 169.

(c) In an action on a fire policy, the burden of showing the falsity of a representation and its materiality is on the defendant.—*British & Foreign Marine Ins. Co. v. Cummings*, 113 Md. 350, 76 Atl. 571.

(d) An insurer seeking to defeat a health benefit certificate on the ground of misrepresentations in the application has the burden of proving the falsity of the representations and of their materiality.—*Ætna Life Ins. Co. v. Millar*, 113 Md. 686, 78 Atl. 483.

(e) Under a policy insuring rents, but requiring insured to rebuild as soon as the case would admit, it must be presumed, in the absence of proof to the contrary, that insured took possession of the premises to rebuild as soon after the fire as possible.—*Palatine Ins. Co. v. O'Brien*, 109 Md. 100, 71 Atl. 775; *O'Brien v. Palatine Ins. Co.*, Id. [Cited and annotated in 23 L. R. A. (N. S.) 123, on rent insurance.] (For former appeal, see *Palatine Ins. Co. v. O'Brien*, 107 Md. 341, 68 Atl. 484.)

(f) Where a policy insuring rents required insured to rebuild or repair in as short a time as the nature of the case would admit, it must be presumed, in the absence of proof to the contrary, that plaintiff took possession of the premises as soon after the fire as possible.—*Palatine Ins. Co. v. O'Brien*, 107 Md. 341, 68 Atl. 484. [Cited and annotated in 47 L. R. A. (N. S.) 291, 296, on what constitutes insurance; in 21 L. R. A. (N. S.) 357, on effect of tender by defendant on right to avail himself of defenses or counterclaims; in 23 L. R. A. (N. S.) 123, 124, on rent insurance.] (For subsequent appeal, see *Palatine Ins. Co. v. O'Brien*, 109 Md. 100, 71 Atl. 775.)

(g) Under act 1894, p. 1059, c. 662 (Code 1904, art. 23, § 196), providing that no untrue statement in warranties contained in an application for a life insurance policy shall effect a forfeiture unless such mis-

representations were material to the risk, if a life insurance company relied upon fraud or misrepresentations by insured to avoid the policy, the burden of proving the falsity of insured statements and that they related to matters material to the risk, or that they were not made in good faith, was upon the company.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. (See Code 1911, art. 23, § 213.) [Cited and annotated in 23 L. R. A. (N. S.) 973, 981, on conflict of laws as to insurance contracts.]

(h) Under act 1894, p. 1059, c. 662, (Supp. Code 1888, art. 23, § 142a), providing that a breach of warranty shall not avoid a policy, unless in a matter material to the risk, the burden of proving materiality is on the company.—*Maryland Casualty Co. v. Gehrmann*, 96 Md. 634, 54 Atl. 678. (See Code 1911, art. 23, § 213.)

(i) Where the defense in the action on a policy is that there was a breach of a material warranty in an application for insurance, the burden of proof rests on the defendant.—*Maryland Casualty Co. v. Gehrmann*, 96 Md. 634, 54 Atl. 678.

(j) The burden is on an insurance company claiming cancellation of a policy for nonpayment of premiums to show compliance with conditions precedent to its right to cancel.—*American Fire Ins. Co. v. Brooks*, 83 Md. 22, 34 Atl. 373. [Cited and annotated in 50 L. R. A. (N. S.) 38, on sufficiency of notice of cancellation of fire policy; in 38 L. R. A. (N. S.) 617, 625, on insurance broker as agent for the insured; in 39 L. R. A. (N. S.) 830, on time from which notice of cancellation of fire insurance becomes effective.]

(k) The sanity of every individual is presumed, and insanity cannot be presumed from the mere fact of suicide.—*Knickerbocker Life Ins. Co. v. Peters*, 42 Md. 414. [Cited and annotated in 17 L. R. A. 90, on effect of provision avoiding policy for suicide, "sane or insane"; in 35 L. R. A. 259, 261, 264, on effect of insanity on suicide condition in policy; in 36 L. R. A. 741, on presumption and burden of proof as to sanity.]

(l) Where it is shown that the assured died by suicide, the burden to show that he was insane at the time is upon the plaintiff in an action on the policy.—*Knickerbocker Life Ins. Co. v. Peters*, 42 Md. 414. [Cited and annotated, see *supra*.]

(m) Where an insurer takes a risk upon a sulphuric acid manufactory and machin-

ery and chemical apparatus connected therewith, he is presumed to know and to have contemplated all the casualties and incidents to which the subject insured may be liable as such manufactory, and to know all the requisites and adjuncts belonging thereto.—*Washington Fire Ins. Co. v. Davison*, 30 Md. 91. [Cited and annotated in 26 L. R. A. 239, on location of movable property as affecting fire insurance; in 41 L. R. A. (N. S.) 864, 865, 905, on admissibility of previous statements by witness out of court consistent with his testimony.]

(n) Where there is a total destruction of the building by fire, and the claim is for the whole loss, and it is shown to have resulted, either altogether or to an unknown extent, from an unauthorized alteration, which increased the risk, the loss must fall on the assured, unless he furnishes proof of some loss occasioned by other causes than such alteration.—*Howell v. Baltimore Equitable Soc.*, 16 Md. 377. [Cited and annotated in 12 L. R. A. (N. S.) 485, on effect on insurance of tenant's breach of condition.]

(o) Where, by the express terms of a policy of insurance, the insurers are not liable unless the loss amounts to 7½ per cent., the plaintiff is bound, as in all similar cases, to bring his claim by proof, within the provisions of the contract.—*Merchants' Mut. Ins. Co. v. Wilson*, 2 Md. 217.

#### § 647. Admissibility of evidence.

##### Cross-References.

Authority of agent, see ante, §§ 76, 92, 100, 110.

Admissions by officers, agents, and employees of insurance companies, see "Evidence," § 244.

Best and secondary evidence, in civil action, see "Evidence," §§ 157-187.

Best and secondary evidence, in criminal prosecution, see "Criminal Law," §§ 400, 402; "Evidence," § 165.

Declarations of insured as evidence against beneficiary, see "Evidence," § 252.

Depositions at coroner's inquest as competent original evidence, see "Evidence," § 157.

Laws establishing rule of evidence as impairing obligation of contract, see "Constitutional Law," § 175.

Parol or extrinsic evidence to contradict or vary contract of insurance, see "Evidence," §§ 405, 411, 413, 414, 417, 418, 419, 424, 427.

Parol or extrinsic evidence to show mistake in contract, see "Evidence," § 433.

Results of experiments, see "Evidence," § 150.

Testimony as to transactions with persons since deceased, see "Witnesses," §§ 139, 140, 142, 143, 144, 154, 158, 163, 166.

#### § 648.—In general.

(a) Evidence as to why the president of a fire insurance company could not take up the adjustment of the insurance until after election held properly excluded as immaterial.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 116 Md. 422, 82 Atl. 372.

(b) In an action on an insurance policy, it was not error to reject a letter from the company's manager, received by the plaintiff's counsel, requesting a conference in reference to the claim, where the conferences between the representatives of the parties did not result in an adjustment or compromise.—*Dulany v. Fidelity & Casualty Co.*, 106 Md. 17, 66 Atl. 614. [Cited and annotated in 23 L. R. A. (N. S.) 859, on construction and effect of condition that assured must be confined to house.]

(c) Questions as to whether defendant's adjuster was authorized to pay a certain sum in settlement of a policy, or to make a settlement before suit brought, were properly excluded.—*Pentz v. Pennsylvania Fire Ins. Co.*, 92 Md. 444, 48 Atl. 139.

(d) In an action on a fire policy insuring tobacco and tobacco stems and packages, where one of the questions to be determined was whether tobacco destroyed was covered by the insurance, declarations of the insured that it was not his intention to cover the tobacco destroyed by such insurance were properly admitted to identify the risk.—*Leftwich v. Royal Ins. Co.*, 91 Md. 596, 46 Atl. 1010.

#### § 649.—Insurable interest.

#### § 650.—Application for insurance.

##### Cross-Reference.

Necessity of compliance with statutory provisions requiring copy of application to be attached to policy, see ante, § 134.

(a) In an action on a fire policy, held not reversible error to exclude from evidence the application for the original policy issued offered to show that the duplicate policy mistakenly described the property.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 116 Md. 422, 82 Atl. 372.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

### § 651.— Policy or other contract.

(a) A policy of life insurance sued on and set out in the pleadings, not having been denied, was properly admitted for the purpose of the action by the express terms of Code 1904, art. 75, § 24, subs. 108, enacting such a rule with reference to "any written instrument filed in the case."—*Prudential Ins. Co. v. Devoe*, 98 Md. 584, 56 Atl. 809. (See Code 1911, art. 75, § 24, subs. 108.)

### § 652.— Existence and condition of subject-matter.

(a) In a suit on a bond given to indemnify a merchant against losses arising from the insolvency of debtors, the evidence showed that orders for goods were taken by plaintiff's salesman, and forwarded to plaintiff's stock department, where they were entered in the order book, and that they were then sent to the shipping clerk, who shipped the goods, and charged them up in the shipping book, and also entered them in the sales book. The shipping clerk saw to the packing of the goods, and made out bills of lading, and mailed them to the customers after their signature by the carrier. The bills of lading were mailed in envelopes having on them plaintiff's return card, but none were ever returned. All shipments were made by common carriers, and some debtors made payments on such shipments, while others returned some of the articles shipped. *Held*, that these circumstances were competent evidence on the issue of the indebtedness of the customers to plaintiff as tending to prove sales, shipments, deliveries, and acceptances.—*Strouse v. American Credit Indemnity Co.*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. v. Strouse*, *Id.*

(b) Where the defense to an action on a fire insurance policy was a breach of a condition for forfeiture in case gasoline was kept on the premises, evidence that the fire was not caused by gasoline was irrelevant.—*Turnbull v. Home Fire Ins. Co.*, 83 Md. 312, 34 Atl. 875. [Cited and annotated in 38 L. R. A. (N. S.) 633, on insurance broker as agent for the insured.]

(c) In an action on a fire insurance policy on a building, it appeared that when the policy was issued the smokestack extended seven feet above the roof; that afterwards, without notice to the company, the smokestack was changed to the side of the roof, near the eaves, where it projected only about half the distance from the shingles to the comb of the roof; and the fire resulted from the change, three hours thereafter. The defense interposed was an increase in the hazard without notice to, and permission by, the company, in violation of the conditions of the policy. *Held*, that the court properly excluded evidence that defendant, about the time plaintiff's policy was issued, gave policies at the same rates on buildings in the same vicinity, similar to plaintiff's, and having smokestacks arranged as plaintiff's was at the time of the fire.—*Willow Grove Creamery Co. v. Planters' Mut. Ins. Co.*, 77 Md. 532, 26 Atl. 1024.

### § 653.— Interest or title of insured.

(a) Where, in an action for the destruction by fire of the building insured, it was shown that the assured before the loss conveyed the property by deed absolute in form, containing covenants of warranty, parol evidence that the grantee on the day of the execution of the deed agreed to resell the property to the assured on his paying a specified sum was incompetent to show that the assured had an interest in the property at the time of the loss.—*Bennett v. Mutual Fire Ins. Co.*, 100 Md. 337, 60 Atl. 99.

### § 654.— Performance or breach of warranty or condition.

#### § 654½.— Payment of premiums.

(a) Where, in a suit on a fire insurance policy, defendant contended that it was released from liability by plaintiff's failure to pay interest on his premium note for a certain period, evidence for plaintiff that his premium note had not been returned to him was admissible.—*Mutual Fire Ins. Co. v. Ritter*, 113 Md. 163, 77 Atl. 388.

(b) In a suit on a fire insurance policy, testimony as to how the insurance agent conducts his affairs in his office, as to entries, handling of cash, etc., as to the collection of payments, and as to whether from wit-

ness' knowledge of such methods at the time of plaintiff's alleged payment of interest he could tell from the entry that all the interest was paid, was inadmissible on the issue as to whether defendant had been paid plaintiff's interest on his policy, for it cannot be shown what "was done" by proof of what "should have been done."—*Mutual Fire Ins. Co. v. Ritter*, 113 Md. 163, 77 Atl. 388.

(c) In a suit on a fire insurance policy, evidence as to the domestic troubles between plaintiff and his wife was inadmissible on the issue as to whether she had paid the interest on such policy.—*Mutual Fire Ins. Co. v. Ritter*, 113 Md. 163, 77 Atl. 388.

#### § 655.— Fraud or misrepresentation.

##### *Cross-Reference.*

Evidence of other acts in obtaining fraudulent insurance, see "Evidence," § 138.

(a) In an action on a health benefit certificate, defended on the ground of misrepresentations in the application affecting the risk, evidence that insured believed that a physician he had consulted prior to the issuance of the certificate was mistaken in his opinion as to a disease from which insured suffered was admissible in explanation of his failure to disclose all that had occurred between the physician and himself in his answers to questions in the application.—*Ætna Life Ins. Co. v. Millar*, 113 Md. 686, 78 Atl. 483.

(b) The application for a policy correctly represented the occupation of the insured as that of a country merchant. A question as to whether he had ever been engaged in the manufacture and sale of intoxicating liquors was answered in the negative, though he in fact had wine and whiskey in stock. *Held*, that testimony by the medical examiner, who wrote the answers, that he understood that country merchants sold wine and whisky as well as other articles; that the insured, at the time of the application, was in a hurry; and that the questions and answers were not read over to him,—is competent, as bearing on the question of good faith on the part of the insured in answering the questions.—*Fidelity Mut. Life Ass'n v. Ficklin*, 74 Md. 172, 21 Atl. 680, 23 Atl. 197.

§ 656.— (Omitted from the classification used herein.)

#### § 657.— Increase of risk.

##### *Cross-References.*

Custom as to keeping dynamite as question for jury, see "Customs and Usages," § 21.

Generality of custom, to refuse risk in canning factory, see "Customs and Usages," § 5.

#### § 658.— Loss or damage to property, and cause thereof.

(a) Evidence as to a witness' belief as to the cause of the fire was properly rejected as immaterial in an action on a fire policy.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 116 Md. 422, 82 Atl. 372.

(b) In an action by a towing company on a policy of marine insurance covering a certain cargo, for the loss of which plaintiff was compelled to pay to a certain transfer company, which, in turn, was liable to a steamship company, which had contracted with the owner for the carriage of the cargo and against which recovery was had for the loss, in an action by the assignee of such owner, evidence that the steamship company had been sued for the value of the cargo and had paid therefor was proper as a link in the evidence showing that the owner of the cargo had been paid for its loss, and that such payment was traceable to defendant.—*Western Assur. Co. v. Chesapeake Lighterage & Towing Co.*, 105 Md. 232, 65 Atl. 637.

(c) Where a fire policy confers an option on the insurer to repair within a given time after loss, evidence of repairs made in pursuance of such provisions, but not completed until after the time specified, is not admissible in an action on the policy in mitigation of damages.—*Franklin Fire Ins. Co. v. Hamill*, 6 Gill 87.

#### § 659.— Death of or injury to person insured and cause thereof.

##### *Cross-Reference.*

Privileged communication, see "Witnesses," § 211.

#### § 660.— Valuation of property.

##### *Cross-Reference.*

Evidence of value or market price of property in general, see "Evidence," § 118.



### § 661.— Amount of loss.

(a) Where the books showing the amount of goods in a mercantile house when destroyed by fire were also burned, evidence showing the amount of stock on hand when an inventory was taken, the quantity purchased afterwards and before the fire, the amount of sales made, and the average profits charged thereon, is admissible to prove the amount of the loss.—*Scottish Union & National Ins. Co. v. Keene*, 85 Md. 263, 37 Atl. 33. [Cited and annotated in 51 L. R. A. 708, on conditions in policy as to keeping, producing and preserving books and papers; in 52 L. R. A. 425, 427, on duty of insured to submit to examination and furnish information.]

### § 662.— Notice and proof and adjustment of loss.

(a) In a suit on a fire insurance policy, it was error to admit as evidence of the loss, the preliminary proofs made by plaintiff, where they showed a greater loss than was shown by testimony at the trial.—*Mutual Fire Ins. Co. v. Ritter*, 113 Md. 163, 77 Atl. 388.

(b) Where, in an action on a fire policy, complainant claimed that prompt filing of proofs of loss had been waived, proofs of loss furnished, though not within the time prescribed, were admissible in evidence.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 113 Md. 430, 77 Atl. 378.

(c) "Proofs of death," under an accident insurance policy, are admissible only to show compliance with the conditions of the policy, but not to show that death was by self-destruction.—*Travelers' Ins. Co. v. Nicklas*, 88 Md. 470, 41 Atl. 906.

(d) In an action on a fire policy which provided that the loss should be ascertained by appraisers, one of the appraisers testified that one of the plaintiffs asked him to attend to the arbitration for him, and he agreed to do so. *Held*, that it was error not to allow defendant to ask the witness what he did in pursuance of the request or the power delegated to him towards procuring an appraisal.—*Caledonian Ins. Co. v. Traub*, 83 Md. 524, 35 Atl. 13. [Cited and annotated in 4 L. R. A. (N. S.) 289, on effect of failure of insurance arbitration; in 47 L. R. A. (N. S.) 390, 411, 413, 419, 420, 442, on arbitration agreements; in 15 L. R. A. (N.

S.) 1062, 1072, on arbitration as condition precedent to action on policy.]

(e) In an action on an insurance policy containing the condition that, in case of loss, the insured should furnish the company with bills of purchase of the goods destroyed, or duplicates thereof, it was competent to show, in an action to recover on the policy for loss by fire that bills had been rendered to the plaintiff by the parties from whom the goods were purchased, and had been paid by him, and that duplicates of such bills could have been obtained by the plaintiff upon application.—*Mispelhorn v. Farmers' Fire Ins. Co.*, 53 Md. 473. [Cited and annotated in 51 L. R. A. 702, 705, 706, 708, on conditions in policy as to keeping, producing, and preserving books and papers.]

(f) Upon the trial of a suit to recover on a policy of fire insurance, an affidavit made by the plaintiff at the time of his application for a trader's license is admissible to show that the plaintiff has exaggerated his loss.—*Mispelhorn v. Farmers' Fire Ins. Co.*, 53 Md. 473. [Cited and annotated, see *supra*.]

(g) In an action on a life insurance policy, the proofs of death of the insured are admissible only for the purpose of showing compliance by the plaintiff with the terms of the policy requiring such proofs.—*Mutual Life Ins. Co. v. Stibbe*, 46 Md. 302. [Cited and annotated in 44 L. R. A. 849, 853, on conclusiveness of proof of loss as against insured or beneficiaries; in 15 L. R. A. (N. S.) 209, on provisions in policies against use of liquor.]

(h) An ex parte affidavit of an assured as to the loss and value of the property insured, furnished to an insurance company as preliminary proof under a condition of its policy, cannot be read to the jury as evidence of the fact and extent of plaintiff's loss, in an action by assured on the policy.—*Citizens' Fire Ins., S. & L. Co. v. Doll*, 35 Md. 89, 6 Am. Rep. 360.

(i) In an action on a policy of insurance containing a clause of payment in 90 days "after proof and adjustment" of the loss, evidence of usage is admissible to prove the meaning of the words "after proof and adjustment thereof."—*Allegre v. Maryland Ins. Co.*, 6 H. & J. 408, 14 Am. Dec. 289. [Cited and annotated in 15 L. R. A. 142, on agreements to arbitrate; in 47 L. R. A. (N. S.) 359, 360, 413, 427, 429, on arbitration

agreements; in 15 L. R. A. (N. S.) 1073, on arbitration as condition precedent to action on policy.]

(j) In an action on a policy of insurance, the protest of the captain, made on arrival at the port, is not admissible to charge the underwriters.—*Patterson v. Maryland Ins. Co.*, 8 H. & J. 71, 5 Am. Dec. 419.

§ 663.—Persons entitled to proceeds.

§ 664.—Estoppel or waiver.

*Cross-Reference.*

Presumptions and burden of proof, see ante, § 646.

(a) Evidence of waiver of proof of loss by defendant fire company in other cases, was properly rejected as immaterial.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 116 Md. 422, 82 Atl. 372.

(b) Where, in an action on a fire policy, defendant claimed freedom from liability for breach of a condition to furnish proof of loss, which requirement plaintiff claimed the company had waived, a question asked one of plaintiff's officers whether he ever received any complaint from the insurance company that the paper sent as proof of loss was not correct or sent in proper time, who answered that he never received any communication at all from defendant on the subject, was competent on the issue of waiver.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 113 Md. 430, 77 Atl. 378.

(c) In an action on a fire policy, correspondence between the insurer and the attorney for the insured, relating to the question of proof of loss, was admissible on the issue of the insurance company's waiver of further proof.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 113 Md. 430, 77 Atl. 378.

(d) Whether insured just before going to see an attorney after waiting a long time to hear from the insurer's adjuster had received word from any one that the insurer was going to refuse to pay the policies is immaterial on the issues of conditions of the policies having been waived.—*Bakhaus v. Caledonian Ins. Co.*, 112 Md. 676, 77 Atl. 310.

(e) Where it appeared, in an action on a fire policy providing for forfeiture in case gasoline was kept on the premises, that an

adjoining building, belonging to the insured, was insured in another company, and rated at a certain price per hundred, which rate included a charge for gasoline, evidence that such was not an unusual rate was admissible to rebut plaintiff's claim that defendant, being a member of the association which had rated the adjoining property, and having issued its policy at the same rate, was affected with constructive notice that gasoline was to be used, and thereby waived the condition against its use.—*Turnbull v. Home Fire Ins. Co.*, 83 Md. 312, 34 Atl. 875. [Cited and annotated in 38 L. R. A. (N. S.) 633, on insurance broker as agent for the insured.]

(f) Where a life insurance policy stipulates that any receipt for a premium past due is a courtesy, and not a waiver of forfeiture, evidence is inadmissible to show a usage so to receive and antedate premiums, since it is in positive conflict with the terms of the policy.—*Busby v. North American Life Ins. Co.*, 40 Md. 572, 17 Am. Rep. 634.

§ 665. Weight and sufficiency of evidence.

*Cross-Reference.*

In action against agent of foreign insurance company, see ante, § 26.

(a) In an action upon an accident policy, which insured a surgeon against loss of sight caused by blood poisoning during a professional operation, evidence held to show that the loss of sight, occurring more than five months after the operation, was due to infection received at that time.—*Maryland Casualty Co. v. Ohle*, 120 Md. 371, 87 Atl. 763.

(b) Evidence held insufficient to show that a false answer in an insurance application was not the answer given by the insured, and that he had answered the question truly.—*Forwood v. Prudential Ins. Co.*, 117 Md. 254, 83 Atl. 169.

(c) Evidence, in an action on a policy of fire insurance, held not to sustain plaintiff's burden of showing either a compliance with the insurer's demand, under the terms of the policy, for his books of accounts, bills, etc., or that it was impossible for him to comply with such demand.—*Mutual Fire Ins. Co. v. Pickett*, 117 Md. 638, 83 Atl. 1097.

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

(d) In an action on a fire policy, evidence held to warrant a finding of waiver of prompt furnishing of proofs of loss.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 118 Md. 430, 77 Atl. 378.

(e) In an action on a life insurance policy, the evidence examined, and held to show that answers of insured in his application as to the amount of intoxicants he consumed, and as to the physician last consulted by him, and the maladies then treated, were untrue.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. [Cited and annotated in 23 L. R. A. (N. S.) 973, 981, on conflict of laws as to insurance contracts.]

(f) Evidence in an action on an accident insurance policy held to show that insured's death did not result, directly and independently of all other causes, from bodily injuries sustained through external, violent, and accidental means.—*Thomas v. Fidelity & Casualty Co.*, 106 Md. 299, 67 Atl. 259.

(g) In a suit on an employer's guaranty bond, whereby defendant undertook to reimburse an insurance company for which plaintiff was receiver for loss of funds in the possession of an employee by larceny or embezzlement of the employee, evidence examined, and held insufficient to show larceny or embezzlement by the employee.—*Williams v. United States F. & G. Co.*, 105 Md. 490, 66 Atl. 495.

(h) In a suit on an industrial policy evidence reviewed, and held legally sufficient to show that plaintiff was prevented from bringing suit within six months by defendant's acts or conduct.—*Home Friendly Soc. v. Roberson*, 100 Md. 85, 59 Atl. 279.

(i) The possession of a life insurance policy acquired under a written assignment to secure a specific debt, which had been paid, was relied on by plaintiff as a delivery to support an equitable assignment of the policy as security for another debt "to him." The evidence showed that when the debt secured by the written assignment was paid the policy, together with the books of account and other papers of the plaintiff, was held by a corporation to whom he had transferred his business, and that the debtor then verbally agreed that the possession of the policy should be continued with the company as security for a new line of credit which

it was to extend to him. There was no evidence that plaintiff had any dealings with the debtor thereafter, or was his creditor at the time of his death. Held, that the proof failed to show an equitable assignment of the policy to plaintiff.—*Evans v. Bulman*, 91 Md. 84, 46 Atl. 315.

(j) When the insurer's agent testified, in an action to recover on a fire insurance policy, that in determining the amount of the policy he inspected the buildings, and agreed to place \$1,500 on the house and \$1,000 on the barn, because he valued the property at \$3,500, and that the barn could be built for a great deal less than \$2,000, the evidence was sufficient to show that the value of plaintiff's house was at least \$1,500, the amount named in the policy.—*Maryland Home Fire Ins. Co. v. Kimmell*, 89 Md. 437, 43 Atl. 764. [Cited and annotated in 67 L. R. A. 706, on retention of policy as waiver of mistake or fraud of insurer or agent.]

(k) The policy provided that, if the interest of the insured was other than the sole ownership for the use of the insured, it should be so represented, in the written part of the policy, otherwise the policy should be void, and that, if the interest of the insured was not truly stated, the policy should be void. It appeared that plaintiff, to secure a loan, had created a ground rent in favor of one H., redeemable on payment of the sum advanced, but such fact was not shown in the policy. It appeared that plaintiff's agent, who secured the policy and defendant's agent who issued it, had knowledge of such facts; that plaintiff's agent had secured policies from other companies through defendant's agent, in which policies were indorsements that a certain amount on a certain building was payable to H., as his interest appeared, but both agents testified that at the time the policy in question was issued they did not know that any one but insured had any interest in the policy. Held, that plaintiff could not recover.—*Farmville Ins. & B. Co. v. Butler*, 55 Md. 233. [Cited and annotated in 28 L. R. A. (N. S.) 836, on relief from mistake of law as to effect of instrument.]

(l) Where, in an action on a life insurance policy conditioned to be void in case the insured should die by his own hand, the evidence shows suicide, plaintiff's proof that

insured was insane at times is sufficient to show suicide while insane, so as to charge the company.—*Knickerbocker Life Ins. Co. v. Peters*, 42 Md. 414. [Cited and annotated in 17 L. R. A. 90, on effect of provision avoiding policy for suicide, "sane or insane"; in 35 L. R. A. 259, 261, 264, on effect of insanity on suicide condition in policy; in 36 L. R. A. 741, on presumption and burden of proof as to sanity.]

(m) In an action upon a policy on a cargo of coffee, it appeared that certain bags thereof were sold in its damaged condition; while the cargo was discharging, plaintiff's agent selected certain bags as undamaged; after the selection, and while the coffee was being weighed, the surveyors tried the selected bags and told said agent that it was all injured; that the agent then tried it, and found that it was injured from dampness; plaintiff then took this portion of the coffee to his warehouse as sound, and made no claim for damage thereto until the trial. *Held*, that this conduct justified the insurers in supposing that no claim would be made on them for damages to the selected bags, and that therefore the proof of damage should be definite and satisfactory.—*Merchants' Mut. Ins. Co. v. Wilson*, 2 Md. 217.

#### § 666. Amount of recovery.

##### Cross-References.

Deductions and offsets, see ante, §§ 492, 508, 511, 514, 523.

Interest on amount of loss, see ante, § 598.

Interest on benefit insurance, see post, § 799.

(a) Where a policy insuring rents provided that a loss thereunder should be payable after 60 days from the furnishing of proofs of loss, plaintiff was entitled to interest on the amount found due from the expiration of such time.—*Palatine Ins. Co. v. O'Brien*, 107 Md. 341, 68 Atl. 484. [Cited and annotated in 47 L. R. A. (N. S.) 291, 296, on what constitutes insurance; in 21 L. R. A. (N. S.) 357, on effect of tender by defendant on right to avail himself of defenses or counterclaims; in 23 L. R. A. (N. S.) 123, 124, on rent insurance.] (For subsequent appeal, see *Palatine Ins. Co. v. O'Brien*, 109 Md. 100, 71 Atl. 775.)

(b) The measure of damages for breach of a contract of insurance by an insurance company is the amount of the certificate.—*Supreme Council of Royal Arcanum v. Brashears*, 89 Md. 624, 43 Atl. 866, 73 Am.

St. Rep. 244. [Cited and annotated in 4 L. R. A. (N. S.) 637, on insured's duty to negative death or accident from excepted cause; in 11 L. R. A. (N. S.) 985, on statements as representations, though expressly denominated as warranties; in 23 L. R. A. (N. S.) 973, on conflict of laws as to insurance contracts.]

(c) In an action upon a policy on a cargo of coffee, it appeared that certain bags thereof were sold in its damaged condition; that while the cargo was discharging, plaintiff's agent selected certain bags as undamaged; that after the selection, and while the coffee was being weighed, the surveyors tried the selected bags, and told said agent that it was all injured; that the agent then tried it, and found that it was injured from dampness; that plaintiff then took this portion of the coffee to his warehouse as sound, and made no claim for damage thereto until the trial. *Held*, that the evidence given, showing that said portion of the coffee received some damage, but not being sufficiently definite to show the amount, the jury might allow nominal damages.—*Merchants' Mut. Ins. Co. v. Wilson*, 2 Md. 217.

#### § 667. Conduct of trial.

##### Cross-Reference.

On interpleader, see "Interpleader," § 31.

(a) An accident insurer, who waived all defenses except suicide, cannot require the submission to the jury of an issue, whether death was due to the gross or culpable negligence of insured.—*Travelers' Ins. Co. v. Nicklas*, 88 Md. 470, 41 Atl. 906.

#### § 668. Questions for jury.

##### Cross-Reference.

Right to jury trial, see "Jury," § 13.

(a) The proper interpretation of a contract of insurance is a question of law for the court.—*Williams v. New York Life Ins. Co.*, 122 Md. 141, 89 Atl. 97. [Cited and annotated in 52 L. R. A. (N. S.) 286, on conflict of laws as to insurance.]

(b) Evidence in an action on an accident insurance policy held to make it a jury question whether the existence of a certain disease contributed in part to insured's death, or whether it was caused wholly by external means.—*Standard Accident & Life Ins. Co. v. Wood*, 116 Md. 575, 82 Atl. 702.

(c) The materiality of warranties contained in an accident insurance policy can only be withdrawn from the jury in ex-

ceptional cases, as where but one inference may be drawn from the evidence thereon.—*Standard Accident & Life Ins. Co. v. Wood*, 116 Md. 575, 82 Atl. 702.

(d) Whether a statement in the application that insured is in good health be a warranty or representation, the question of good faith, or of its truth or materiality, is ordinarily for the jury, though, where either bad faith of the applicant or the falsity or materiality of the misrepresentations is shown by uncontradicted evidence, the court may determine the question as a matter of law, and may instruct that certain diseases, such as cancer, tuberculosis, or Bright's disease, are material to the risk, since the company's knowledge that the applicant had either would necessarily influence it in passing upon the risk.—*Mutual Life Ins. Co. v. Robinson*, 115 Md. 408, 80 Atl. 1085.

(e) Where evidence in an action on a life policy defended on the ground of misrepresentations as to insured's health, made in the application, was conflicting, the case was for the jury on the essential facts.—*Mutual Life Ins. Co. v. Robinson*, 115 Md. 408, 80 Atl. 1085.

(f) Where the bad faith of an applicant for a policy or the falsity and materiality of the representations are shown by clear and uncontradicted evidence, the court may determine the issues as a matter of law; but, where the evidence is doubtful, such issues are for the jury.—*Ætna Life Ins. Co. v. Millar*, 113 Md. 686, 78 Atl. 483.

(h) In an action on a health benefit certificate defended on the ground of false representations in the application as to the condition of the health of insured, evidence held to require submission to the jury of the good faith of insured in making the statements and as to the materiality of the representations.—*Ætna Life Ins. Co. v. Millar*, 113 Md. 686, 78 Atl. 483.

(h) In an action on a health benefit certificate stipulating that it did not cover disability resulting from any disease contracted within 15 days from the date of the policy, evidence held to require submission to the jury of the issue whether the disability complained of resulted from a disease contracted within 15 days from the date of the policy.—

*Ætna Life Ins. Co. v. Millar*, 113 Md. 686, 78 Atl. 483.

(i) The interpretation of a policy of insurance, containing a written memorandum of terms of a special agreement, is for the court.—*Mutual Life Ins. Co. v. Murray*, 111 Md. 600, 75 Atl. 348.

(j) In an action on an insurance policy for death by accidental injury, where it was undisputed that insured was struck by a bale of hay, and was thereafter ill, whether the accident was the proximate cause of his illness and subsequent death held for the jury under the medical testimony.—*General Accident, Fire & Life Assur. Corp'n v. Homely*, 109 Md. 93, 71 Atl. 524.

(k) Whenever statements and answers in an application for life insurance are shown to be false by clear, convincing, and uncontradicted evidence, the court may so rule as a matter of law; otherwise the question is for the jury.—*Mutual Life Ins. Co. v. Rain*, 108 Md. 353, 70 Atl. 87.

(l) While, ordinarily, the truth or falsity of answers in applications for life insurance policies, as well as their materiality and good faith, are questions for the jury, since the effect of the evidence is to avoid the contract in its inception, whenever either of these facts are established by clear and uncontroverted evidence, the court may so rule as a matter of law.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. [Cited and annotated in 28 L. R. A. (N. S.) 973, 981, on conflict of laws as to insurance contracts.]

(m) In an action on an insurance policy, statements of physicians who had treated insured as to the amount of liquor he drank held insufficient, in the face of other testimony by the same witnesses, to justify the submission of that question to the jury.—*Mutual Life Ins. Co. v. Mullan*, 107 Md. 457, 69 Atl. 385. [Cited and annotated, see supra.]

(n) Whether the failure of an insured to mention in his application that he had, within the prescribed period, received medical attention, constituted a breach of warranty material to the risk insured, is ordinarily a question for the jury.—*Dulany v. Fidelity & Casualty Co.*, 106 Md. 17, 66 Atl. 614. [Cited

For cases in other jurisdictions, see same title and section number in Key Number Digests, and cross-references therein.

and annotated in 23 L. R. A. (N. S.) 359, on construction and effect of condition that assured must be confined to house.]

(o) In an action on a policy of marine insurance, the seaworthiness of the lighter in which the cargo insured was loaded held, under the evidence, a question for the jury.—*Western Assur. Co. v. Chesapeake Lighterage & Towing Co.*, 105 Md. 232, 65 Atl. 637.

(p) Under Code 1904, art. 23, § 196, declaring that, whenever an application for a life policy contains a warranty of the truth of answers, no misrepresentation or untrue statement made in good faith shall effect a forfeiture, unless the misrepresentation or statement relates to some matter material to the risk, in an action on a policy the question whether a matter was material to the risk is ordinarily for the jury.—*Monahan v. Mutual Life Ins. Co.*, 108 Md. 145, 63 Atl. 211, 5 L. R. A. (N. S.) 759. (See Code 1911, art. 23, § 213.)

(q) Though the materiality of the representations in an application for life insurance as to the health of the applicant is ordinarily a question for the jury, yet where it is manifest from the uncontradicted evidence, or from the nature of the representations themselves, that they are material to the risk, it is the duty of the court to so instruct the jury.—*Bankers' Life Ins. Co. v. Miller*, 100 Md. 1, 59 Atl. 116.

(r) In a suit on an accident policy, the question whether breaches of warranty as to previous receipt of indemnity for accident and as to physical soundness are material to the risk is for the jury; the evidence showing that many years before the applicant had received a blow on the knee, which troubled him for a couple of days, and that one leg was slightly curved.—*Maryland Casualty Co. v. Gehrman*, 96 Md. 634, 54 Atl. 678.

(s) Where in a suit on a bond given to indemnify a merchant for losses arising from the insolvency of debtors, an issue is made as to whether certain firms were separate concerns, or but branches of one concern, such issue is a question exclusively for the jury.—*Strouse v. American Credit Indemnity Co.*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. v. Strouse*, Id.

(t) In a suit on a bond given to indemnify a merchant for losses arising from the insolvency of debtors, it is proper to withdraw from the jury's consideration the statement of plaintiff's witness that when goods were shipped they were at the risk of the buyer, since whether they were so was a conclusion of law depending on circumstances attending the shipments.—*Strouse v. American Indemnity Co.*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. v. Strouse*, Id.

(u) A bond given to insure a merchant against losses arising from the insolvency of debtors provided that debts contracted with customers not having a certain rating in Dun's Mercantile Agency Rating Book should not be covered by the bond. In this book, under the head "Baltimore," a certain customer was given a rating within the bond. Under the heads "Spokane," "Butte," etc., the names of the customers' branch houses were followed by the words "See Baltimore, Md.," were, in effect, a repetition of the rating given the Baltimore house, and hence that there was sufficient evidence to go to the jury on the question of the rating of the branch houses.—*Strouse v. American Credit Indemnity Co.*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. v. Strouse*, Id.

(v) Where the question whether certain goods were covered by a fire policy depended on other evidence than the policy alone, it became a question for the jury under all the evidence, and a ruling thereon as a matter of law was error.—*Leftwich v. Royal Ins. Co.*, 91 Md. 596, 46 Atl. 1010.

(w) Where it appeared that the insurer sent a renewal receipt to the broker who procured the insurance in the first instance, and collected the premiums thereon, but whose employment by the insured extended only to the procurement of the policy; that such broker collected the renewal premium, after delivering the receipt, and that the insurer subsequently wrote to the broker, reminding him that he had not remitted the premium,—it was properly left to the jury to say whether the broker was authorized to deliver the receipt and collect the premium.—*American Fire Ins. Co. v. Brooks*, 83 Md. 22, 34 Atl. 373. [Cited and annotated

in 50 L. R. A. (N. S.) 38, on sufficiency of notice of cancellation of fire policy; in 38 L. R. A. (N. S.) 617, 625, on insurance broker as agent for the insured; in 39 L. R. A. (N. S.) 830, on time from which notice of cancellation of fire insurance becomes effective.]

(x) Where a policy provides that if an engine be used on the premises the company shall appoint a committee to ascertain the amount of increased risk, for which the insured shall give an additional premium note, whether the increased risk from the use of an engine caused the loss, and whether the period between the giving of notice of the use of the engine by the insured and the day of the fire was a reasonable time within which the company should have appointed the committee, are questions for the jury.—*Schaeffer v. Farmers' Mut. Fire Ins. Co.*, 80 Md. 563, 31 Atl. 317; *Farmers' Mut. Fire Ins. Co. v. Schaeffer*, 82 Md. 377, 33 Atl. 728. [Cited and annotated in 25 L. R. A. (N. S.) 13, on failure of insurer to speak or act after notice of breach of policy as waiver.]

(y) Where a policy provides that, if an engine be used on the premises, the company shall appoint a committee to ascertain the amount of increased risk, for which the insured shall give an additional premium note, the question, in an action on the policy, whether the use of the engine increased the risk, is for the jury.—*Schaeffer v. Farmers' Mut. Fire Ins. Co.*, 80 Md. 563, 31 Atl. 317, 45 Am. St. Rep. 361; *Farmers' Mut. Fire Ins. Co. v. Schaeffer*, 82 Md. 377, 33 Atl. 728. [Cited and annotated, see supra.]

(z) Where the policy of insurance has been lost, it is for the jury to say, in an action against the insurer, whether defendant has proved that it contained the clause against actions after six months.—*Metropolitan Life Ins. Co. v. Dempsey*, 72 Md. 288, 19 Atl. 642. [Cited and annotated in 47 L. R. A. 708, 712, as to when contractual limitation of time for suit on policy begins to run; in 53 L. R. A. 196, on innocent misrepresentations as to health of insured having undiscovered disease.]

(aa) As to what is a reasonable time for a fire insurance company to make known its dissatisfaction with proofs of loss furnished is a question of law for the court.—*Mispelhorn v. Farmers' Fire Ins. Co.*, 53 Md. 473. [Cited and annotated in 51 L. R.

A. 702, 705, 706, 708, on conditions in policy as to keeping, producing, and preserving books and papers.]

(bb) The sufficiency of preliminary proofs in a trial on an insurance policy is for the court.—*Mutual Life Ins. Co. v. Stibbe*, 46 Md. 302. [Cited and annotated in 44 L. R. A. 849, 853, on conclusiveness of proof of loss as against insured or beneficiaries; in 15 L. R. A. (N. S.) 209, on provisions in policies against use of liquor.]

(cc) Whether an application to an insurance company by a party desiring to be insured has been declined, or not, is a question exclusively for the determination of the jury.—*Mutual Ben. Life Ins. Co. v. Wise*, 34 Md. 582. [Cited and annotated in 55 L. R. A. 123, 124, 128, on false representations as to previous applications forfeiting life insurance.]

(dd) An interrogatory in an application for life insurance, "Has the party been or is he now employed in any military or naval service?" was answered, "No." It appeared that insured had been a chaplain in the army of the Confederate States. *Held*, that it should have been left to the jury to determine whether a chaplain in the army is in the military service, and, if so, whether insured was ever actually employed in such service.—*Mutual Ben. Life Ins. Co. v. Wise*, 34 Md. 582. [Cited and annotated, see supra.]

(ee) Whether a misrepresentation or concealment by one seeking insurance is material, or not, is a question for the jury.—*Franklin Fire Ins. Co. v. Coates*, 14 Md. 285. [Cited and annotated in 43 L. R. A. 664, on insurable interest in unfinished building under construction by contractor; in 52 L. R. A. 333, 335, on when insurable interest must exist under fire policy.] *Mutual Ins. Co. v. Deale*, 18 Md. 26, 79 Am. Dec. 673. [Cited and annotated in 66 L. R. A. 659, 661, on husband's insurable interest in wife's property; in 69 L. R. A. 375, on effect of conveyance by husband to wife.]

(ff) A witness, calling on the president of defendant insurance company to ascertain why a loss was not paid, inquired what further proof of loss was wanted. The president replied, "The policy will show that," or "It is laid down in the policy." *Held*, that the jury should have been instructed that the evidence was insufficient, as a matter of law, to establish a waiver of proof of loss; the question of such waiver on contradicted testimony being for the court.—

*Spring Garden Mut. Ins. Co. v. Evans*, 9 Md. 1, 66 Am. Dec. 30. [Cited and annotated in 34 L. R. A. 582, on presumption against spoliator of evidence.]

(gg) The presumption of law being that the vessel was seaworthy, the court below erred in deciding that the evidence removed that presumption, as it was a question for the jury to decide.—*Field v. Insurance Co. of North America*, 3 Md. 244.

(hh) In an action of covenant, where the plaintiff was not entitled to recover, unless he proved that the property insured was destroyed by fire, and that notice of the loss and an estimate of damages sustained were furnished the underwriter, according to the terms of the policy, it was held that it was erroneous to instruct the jury that the plaintiff was entitled to recover, in such a form as to take from them the consideration of the fact when the fire occurred, and assume the day, or that notice of the disaster was forthwith communicated, and a particular account of loss furnished to the company.—*Franklin Fire Ins. Co. v. Hamill*, 6 Gill 87.

(ii) Whether notice and proofs of loss have been given with due diligence and without unnecessary delay, within the meaning of a policy providing that notice shall be given forthwith and proofs made as soon as possible, is for the jury, under all the circumstances of the case.—*Edwards v. Baltimore Fire Ins. Co.*, 3 Gill 176.

(jj) In an action on a policy of insurance, it was held that the question whether the risk had been materially increased by the sailing of the vessel on her voyage at one time instead of another ought not to be submitted to the jury, where there was no testimony whatever in the case to warrant the jury in drawing such conclusion.—*Allegre v. Maryland Ins. Co.*, 2 G. & J. 136, 20 Am. Dec. 424.

(kk) In the absence of any contract determining what repairs or alterations the owner of an insured building is authorized to make without forfeiting his policy, the questions of what repairs or alterations he may make, and whether they were made in the usual way, are for the jury.—*Jolly's Adm'r v. Baltimore Equitable Soc.*, 1 H. & G. 295, 18 Am. Dec. 288.

(ll) Whether alterations or additions, made to a house insured against fire, increase the risk or not, is a question of fact for a jury to determine.—*Jolly's Adm'r v. Baltimore Equitable Soc.*, 1 H. & G. 295, 18 Am. Dec. 288.

#### § 669. Instructions.

(a) Requested prayer permitting verdict for defendant upon finding warranties contained in an accident insurance policy untrue without finding that they were material was properly refused.—*Standard Accident & Life Ins. Co. v. Wood*, 116 Md. 575, 82 Atl. 702.

(b) A requested instruction that there was no evidence sufficient to show that the embalming fluid used on a body caused any organs to shrink, "or to interfere in the slightest degree with an accurate post-mortem examination of said organs," was not modified to defendant's prejudice by striking but the quoted part.—*Standard Accident & Life Ins. Co. v. Wood*, 116 Md. 575, 82 Atl. 702.

(c) Where a fire policy, provided for notice and proofs of loss as conditions precedent to a right to recover thereon, plaintiff's prayer that if defendant made the policy and delivered it to plaintiff, and if thereafter the property described therein was totally consumed, and plaintiff gave defendant notice and defendant received same, though not within the time prescribed in the policy, and if such notice was made out and sent to defendant with reasonable dispatch under the circumstances mentioned in the evidence after the fire, and the cash value of the property insured exceeded the total amount of insurance in force on the bridge at the time of the fire, then plaintiff was entitled to recover was erroneous as relieving plaintiff from the liability of complying with the policy requirements as to proofs of loss.—*Citizens' Mut. Fire Ins. Co. v. Conowingo Bridge Co.*, 113 Md. 430, 77 Atl. 378.

(d) In an action on a health benefit certificate, defended on the ground of false statements in the application, an instruction, not taking into account insured's good faith in making the statement and whether the ailment not disclosed was temporary or permanent, serious or trifling, was properly re-



fused.—*Ætna Life Ins. Co. v. Millar*, 113 Md. 686, 78 Atl. 483.

(e) In an action on an insurance policy for death by accidental injury, an instruction that if insured was injured by being struck by a bale of hay, and on the next day there was a welt on his back, and an examination on the fourth day thereafter showed a tension of the muscles of the back, and three days thereafter insured died of acute nephritis caused by the accident, and was free from all disease until his death except that caused by the accident, plaintiff could recover, while not affirmatively requiring a finding that his death was caused by the accident independent of all other causes, did so in effect.—*General Accident, Fire & Life Assur. Corp'n v. Homely*, 109 Md. 93, 71 Atl. 524.

(f) Where the policy sued on, in addition to stipulating for a certain amount in case of death from purely accidental causes, also provided for payment of one-fifth of that sum if the injury, fatal or otherwise, was due wholly or in part to disease or bodily infirmity, instructions which barred any recovery at all unless death was due wholly to accidental causes were properly refused.—*General Accident, Fire & Life Assur. Corp'n v. Homely*, 109 Md. 93, 71 Atl. 524.

(g) Plaintiff, in an action on an insurance policy, requested an instruction that if the court found from the evidence the issuing of the policy sued on, and the loss of the insured property, and also of the bills for the purchase thereof, by fire, and that plaintiff furnished the most complete proof of loss possible under the circumstances, she was entitled to recover; and the court modified it to the effect that she could not recover if the proofs of loss furnished by her were not such a reasonable compliance with the policy as she could have made, and "there was no waiver of the proofs of loss as required by the policy." *Held*, that the quoted part of the modification was erroneous, as it was unaccompanied by any instruction as to what acts or conduct were sufficient to constitute the waiver.—*Pentz v. Pennsylvania Fire Ins. Co.*, 92 Md. 444, 48 Atl. 139.

(h) In a suit on a bond given to indemnify a merchant for losses arising from the insolvency of debtors, it is proper to in-

struct that plaintiff cannot recover any amount in excess of that claimed in his bill of particulars.—*Strouse v. American Credit Indemnity Co.*, 91 Md. 244, 46 Atl. 328, 1063; *American Credit Indemnity Co. v. Strouse*, *Id.*

(i) Where the only evidence of defendant being a party to an agreement by which a former action was settled was that it was represented by counsel at the meeting at which it was arranged, and that D., who had represented defendant, among other companies, as an adjuster, thought the settlement a good one, but declined to sign a memorandum thereof on behalf of defendant because not authorized so to do, it was proper to charge that no evidence had been offered tending to show that defendant was a party to such agreement, since neither counsel nor adjuster has power to compromise without special authority.—*Packham v. German Fire Ins. Co.*, 91 Md. 515, 46 Atl. 1066, 50 L. R. A. 828, 80 Am. St. Rep. 461.

[Cited and annotated in 29 L. R. A. (N. S.) 701, as to effect of discharge of person primarily liable for loss, or of contractual provision giving him benefit of insurance, upon insured's right of action against insurer; in 41 L. R. A. (N. S.) 720, on right of insurer against insured who has received compensation from third persons responsible for loss.]

(j) There is no inconsistency in giving an instruction stating what might be recovered if facts be found showing a valid award, and one stating what might be recovered if the facts showed there was no valid award; the evidence being conflicting as to validity of award.—*Caledonian Fire Ins. Co. v. Traub*, 86 Md. 86, 37 Atl. 782.

[Cited and annotated in 15 L. R. A. (N. S.) 1062, 1072, on arbitration as condition precedent to action on policy.]

(k) A life insurance policy provided that it should be void if any of the answers in the applications were untrue. In answer to one of these questions, deceased said she was in sound health, and she died nine months thereafter. There was evidence tending to show that she died of phthisis, and that she had been sick three years. In an action on the policy the jury were instructed generally that they should find for defendant if any answer was in any respect untrue. *Held*, that it was error to refuse to instruct that if deceased was not in

sound health at the time of making her application for insurance, and in answer to said question said she was in sound health, or if she was sick for three years before her death, or had the phthisis for two or more years before her death, and in making her application did not so inform defendant, the verdict should be for defendant.—*Metropolitan Life Ins. Co. v. Dempsey*, 72 Md. 288, 19 Atl. 642. [Cited and annotated in 47 L. R. A. 708, 712, as to when contractual limitation of time for suit on policy begins to run; in 53 L. R. A. 196, on innocent misrepresentations as to health of insured having undiscovered disease.]

(l) Defendant prayed for an instruction that plaintiff's recovery must be limited to the amount, after deducting all necessary expenses, that an assessment would have realized if made on the death of the assured. The certificate contained a stipulation that "all suits shall only be for the benefit of an assessment made by the proper officers," and that certain deductions were to be made for expense account, etc. In this case there had never been any assessment, and the pleadings did not make a case to recover for the neglect. *Held*, that the court properly refused the prayer.—*Oriental Ins. Ass'n v. Glancey*, 70 Md. 101, 16 Atl. 391.

(m) A refusal to charge as to the effect of prior insurance in another company is proper where the policy makes no provision avoiding it for such reason, but provides for a ratable distribution of loss in case of other insurance, and where the application for insurance is not in evidence, and defendant, when notified, refuses to produce it.—*Agricultural Ins. Co. v. Bemiller*, 70 Md. 400, 17 Atl. 380.

(n) Where the insured has warranted that he is the sole and unconditional owner of insured goods, when in fact he holds them under a conditional contract of purchase, a request to charge that if the conditions of the purchase have not been complied with the assured cannot recover should be granted, though it describes him as lessee or bailee, instead of conditional owner.—*Westchester Fire Ins. Co. v. Weaver*, 70 Md. 586, 17 Atl. 401, 18 Atl. 1034, 5 L. R. A. 478. [Cited and annotated in 20 L. R. A. (N. S.) 779, on vendee under land contract as owner within meaning of insurance policy.]

(o) A fire insurance policy contained a clause of exemption from liability in case of loss from "explosions of any kind unless fire ensues, and then for the loss or damage by fire only." In a suit to recover for a loss, it became a question whether the loss was occasioned by fire or by an explosion. The court charged that, "if they should find that the destruction or injury was directly caused by or the result of a fire, the plaintiff was entitled to recover." *Held*, that the charge was improper; the question of explosion as the direct cause of the loss being ignored.—*Transatlantic Fire Ins. Co. v. Dorsey*, 56 Md. 70, 40 Am. Rep. 403. [Cited and annotated in 19 L. R. A. 597, on insurer's liability for loss by explosion.]

(p) When the question is as to misrepresentation to or concealment from the insurance company on the part of the insured, the company is entitled to specific instructions from the court directing the attention of the jury to the particular fact in respect to which such misrepresentation is charged.—*Mutual Fire Ins. Co. v. Deale*, 18 Md. 26, 79 Am. Dec. 673. [Cited and annotated in 66 L. R. A. 659, 661, on husband's insurable interest in wife's property; in 69 L. R. A. 375, on effect of conveyance by husband to wife.]

(q) Defendant insurance company's prayer for an instruction, omitting to request a submission to the jury of the question as to the materiality of the disclosure or concealment by which a policy is to be rendered void, is for this reason defective.—*Franklin Fire Ins. Co. v. Coates*, 14 Md. 285. [Cited and annotated in 48 L. R. A. 664, on insurable interest in unfinished building under construction by contractor; in 52 L. R. A. 333, 335, on when insurable interest must exist under fire policies.]

(r) An instruction that, if the jury should find that the assured, at the time of his application, was predisposed to dyspepsia to such a degree as seriously to affect his health and "produce bodily infirmity," as a distinct proposition, the plaintiff could not recover, would be a proper one.—*New York Life Ins. Co. v. Flack*, 3 Md. 841, 56 Am. Dec. 742. [Cited and annotated in 30 L. R. A. 610, as to who are "legal representatives" within life policies; in 55 L. R. A. 123, on false representations as to previous applications forfeiting life insurance.]

(s) Where, in an action on a policy of insurance on a cargo of coffee, the evidence was too vague and indefinite as to the damage done to a portion of it to furnish any grounds for an estimate of the amount, the court erred in instructing the jury that they ought to allow such an amount of damage as, from the evidence, they might find to have been equivalent to the plaintiff's loss.—*Merchants' Mut. Ins. Co. v. Wilson*, 2 Md. 217.

### § 670. Verdict and findings.

#### Cross-References.

Amendment or correction of verdict, see "Trial," § 339.  
Failure to find on particular issues, see "Trial," § 397.  
Power of jury to find specially, see "Trial," § 347.

### § 671. New trial.

### § 672. Judgment.

#### Cross-References.

Effect of failure to interpose defenses on right to equitable relief against judgment, see "Judgment," § 429.  
Excuses for default, see "Judgment," § 143.  
Fraud as ground for equitable relief, see "Judgment," § 443.  
Laches affecting right to equitable relief, see "Judgment," § 456.  
Meritorious cause of action or defense to authorize opening of default, see "Judgment," § 145.  
Payment and satisfaction of judgment, see "Judgment," § 874.  
Pleading in proceedings for equitable relief, see "Judgment," § 460.  
Pleadings to sustain default judgment, see "Judgment," § 101.  
Right to open or vacate default in general, see "Judgment," § 138.

(a) Where, in a suit brought upon a policy of fire insurance, plaintiff files his declaration, together with the policy, and makes affidavit showing the amount claimed to be due, and it appears by the terms of the policy that the method of ascertaining the amount due in case of loss is prescribed therein, and that the assured had ascertained such loss according to its terms, and made oath thereto, *held*, that the plaintiff was entitled to a judgment by default under act 1864, c. 6, § 6, regulating practice in certain cases in Baltimore city, for the want of a sworn plea filed to the rule day by defendants; and that the data necessary to enable the amount due to be ascertained ap-

peared in the policy, and justified plaintiff in verifying the same by his oath.—*Orient Mut. Ins. Co. v. Andrews*, 66 Md. 371, 7 Atl. 693. (See Speedy Judgment Act, Baltimore City Rev. Charter, §§ 312, et seq.; act 1914, c. 378, Code [vol. 3], art. 75, § 24, subs. 107.)

(b) Each of three marine insurance policies, issued on three successive days, contained the American clause, that "if there be any prior insurance these insurers shall be answerable only for so much of the amount as such prior insurance shall be deficient towards fully covering the premises hereby insured, \* \* \* and, in case of any insurance upon said premises subsequent in date to this policy, this company shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent insurers," etc. *Held*, that a judgment against the first insurers was not conclusive that they, and they alone, were liable for the whole loss.—*Whiting v. Independent Mut. Ins. Co.*, 15 Md. 297. [Cited and annotated in 23 L. R. A. 121, on payment by volunteer or stranger.]

### § 673. Execution and enforcement of judgment.

#### Cross-Reference.

Mandamus to compel assessment to pay judgment, see "Mandamus," § 136.

### § 674. Appeal and error.

#### Cross-References.

Appeal by administrator, see "Executors and Administrators," § 455.  
Bond on appeal from two or more judgments, see "Appeal and Error," § 394.  
Courts invested with appellate jurisdiction, see "Courts," §§ 213, 387.  
Review as dependent on presentation of question in lower court, see "Appeal and Error," § 173.

(a) In an action upon a policy of fire insurance upon a flour mill, where the policy provides that it shall be of no effect if the mill should be so altered or used for carrying on therein any business which, "according to the class of hazards thereto annexed," would increase the risks, etc., the appellate court will not, upon review, where the class of hazards annexed to the policy is not to be found in the record, assume, as matter of fact, that the mere change in the machinery of the mill, from the burr to the

roller process, was such an alteration as would, according to the class of hazards annexed to the policy, increase the risk.—*Planters' Mut. Ins. Co. v. Rowland*, 66 Md. 236, 7 Atl. 257. [Cited and annotated in 45 L. R. A. (N. S.) 125, on change in use or condition of mill or factory as avoiding policy.]

#### § 675. Costs and attorney's fees.

##### Cross-References.

As damages, see "Damages," § 71½.

Authorizing recovery of attorney's fees as deprivation of property without due process of law, see "Constitutional Law," § 317.

Laws authorizing recovery of attorney's fees as denying the equal protection of the laws, see "Constitutional Law," § 248.

Laws authorizing taxation of attorney's fee, as class legislation, see "Constitutional Law," § 208.

##### Annotation.

Validity of statutory provision for attorney's fee in actions against insurance companies.—17 L. R. A. (N. S.) 910, note.

### XIX. REINSURANCE.

##### Cross-References.

Mutual benefit insurance, see post, § 699.

Delegation of power to Secretary of State to consent to reinsurance, see "Constitutional Law," § 62.

#### § 676. Power and right to reinsure risk.

(a) St. 19 Geo. II. c. 37, § 4, which is in force in Maryland and which provides "that it shall not be lawful to make reinsurance unless the assurer shall be insolvent, become bankrupt or die," relates exclusively to marine reinsurance.—*Consolidated Real-Estate & Fire Ins. Co. v. Cashow*, 41 Md. 59. (See Alex. Brit. St. [Coe's ed.] 1017.) [Cited and annotated in 25 L. R. A. 453, on oral proof of foreign laws; in 8 L. R. A. (N. S.) 847, 849, 858, on reinsurer's liability.]

#### §§ 677-679. The contract in general.

(a) In an action on accounting between two insurance companies, whereby one was to participate in one-third of that part of the business of the other embracing surety, fidelity, and burglary insurance, excluding excise business, and to bear one-third the overhead charges of the business in which it participated, overhead charges for excluded excise business were apportioned according to its volume, as that was the only

method possible.—*Munich Re-Insurance Co. v. United Surety Co.*, 121 Md. 479, 88 Atl. 271.

(b) Under a five-year contract, by which the Munich Re-Insurance Company was to participate in the business of the United Surety Company, and providing for the submission by the United Company to the Munich Company of annual accounts, the accounts for four years preceding notice held governed by article 8 of contract, and premium reserve should be charged in same as disbursements; but account for final year was governed by article 13, and premium reserve should not be charged.—*Munich Re-Insurance Co. v. United Surety Co.*, 121 Md. 479, 88 Atl. 271.

(c) Under contract between the United Surety Company and the Munich Re-Insurance Company, whereby the Munich Company was to participate in one-third the business of the United Company, and, at the expiration of contract, the Munich Company was to receive a certain amount as reimbursement for good will, the Munich Company held entitled to the amount so specified, though it had, soon after execution of contract, instituted proceedings for rescission.—*Munich Re-Insurance Co. v. United Surety Co.*, 121 Md. 479, 88 Atl. 271.

(d) Where property is insured, and the insurer reinsures, and it is destroyed by fire and before the loss is paid the original insurer becomes bankrupt, and the reinsurer pays the whole amount of the reinsurance to the trustee of the original insurer, the original assured has no claim in respect of the money so paid.—*Consolidated Real-Estate & Fire Ins. Co. v. Cashow*, 41 Md. 59. [Cited and annotated, see supra, § 676.]

§§ 680, 681. (See Analysis.)

#### § 682. Avoidance or forfeiture of contract.

(a) Complainant having been induced by fraud to subscribe for certain of the stock of defendant surety company, and also, as a part of the same transaction, to contract to reinsure a portion of defendant's liability on its risks, evidence held to require a finding that complainant with knowledge of the fraud waived its right to rescind, not only the stock subscription, but also the

reinsurance contract.—*Munich Re-Insurance Co. v. United Surety Co.*, 113 Md. 200, 77 Atl. 579.

(b) Where complainant, with knowledge of the fraud of defendant's president by which complainant had been induced to subscribe for certain of defendant's stock and to enter into a reinsurance contract with it, agreed to waive its right to rescind on condition that the unsubscribed portion of defendant's stock be subscribed and paid in immediately, whereupon those interested in defendant company present at the directors' meeting subscribed and paid for the stock, complainant was thereafter precluded from rescinding its reinsurance contract in equity.—*Munich Re-Insurance Co. v. United Surety Co.*, 113 Md. 200, 77 Atl. 579.

§ 683. Risks and causes of loss.

§ 684. Extent of liability of reinsurer.

*Annotation.*

Liability of reinsurer.—8 L. R. A. (N. S.) 845; 44 L. R. A. (N. S.) 317, notes.

(a) Where property is insured, and the insurer reinsures, and it is destroyed by fire, and before the loss is paid the original insurer becomes bankrupt, and the assured receives but a small dividend out of the bankrupt's estate, the reinsurer is still liable to pay the whole amount of the reinsurance to the trustee of the original insurer, without deducting the dividend.—*Consolidated Real-Estate & Fire Ins. Co. v. Cashow*, 41 Md. 59. [Cited and annotated, see supra, § 676.]

§ 685. Notice and proof of loss to reinsurer.

(a) By a policy of reinsurance, the insurance company stipulated that their insurance of \$5,000 was part of the "sum or sums insured by the Fulton Fire Ins. Co. of New York as above, for Newhall, Borie & Co. by their policies Nos. 2,335 and 2,779, and to be subject to the same risks, valuations, conditions, and mode of settlements as are or may be adopted or assumed by said company." In an action on the policy, held, that this clause dispensed with preliminary proof of loss.—*Consolidated Real-Estate & Fire Ins. Co. v. Cashow*, 41 Md. 59. [Cited and annotated, see supra, § 676.]

(b) By a policy of reinsurance the company stipulated that their insurance of \$5,000 was part of the "sum or sums insured by the F. Co. as above, for N., B. & Co., by their policies Nos. 2,335 and 2,779, and to be subject to the same risks, valuations, conditions, and mode of settlements as are or may be adopted or assumed by said company." Held, that this clause fastened the responsibility of the defendant to the settlement and adjustment with the original assured as to the amount of loss.—*Consolidated Real-Estate & Fire Ins. Co. v. Cashow*, 41 Md. 59. [Cited and annotated, see supra, § 676.]

§ 686. Actions on contracts of reinsurance.

## XX. MUTUAL BENEFIT INSURANCE.

*Cross-References.*

Beneficial associations in general, see "Beneficial Associations."

Exemption from taxation, see "Taxation," § 241.

Laws impairing obligation of contracts, see "Constitutional Law," § 154.

### (A) CORPORATIONS AND ASSOCIATIONS.

*Cross-Reference.*

Mutual insurance companies, see ante, § 52.

§ 687. Nature and status in general.

§ 688. Exemption from general laws regulating insurance.

*Cross-References.*

Statutory provisions against forfeiture, see post, § 745.

Statutory provisions relating to damages for refusal of payment, see post, § 800.

Statutory provisions relating to suicide, see post, § 788.

§ 689. Special constitutional and statutory provisions.

(a) Act 1894, c. 295, § 143e, defining a beneficial society to be a corporation formed and carried on "for the sole benefit of its members and their beneficiaries, and not for profit," operating on the lodge system, with ritualistic work, and declaring that such corporations shall be exempt from the provisions of the insurance laws, and may continue business under the provisions governing fraternal beneficiary societies, on condition that each deposit \$10,000 with the in-

insurance commissioner, as a guaranty of payment of "certificates" issued by it, does not authorize the issuance of life insurance policies, or the blending of the business of a stock insurance company with that of a beneficial society, so as not to be separable; section 143r providing that any association, entitled to do business under the provisions of §§ 143e and 143r, which shall so conduct its affairs, or change its charter, constitution, or laws, that it shall not answer to the definition of a beneficial society, shall cease to be entitled to the privileges of said provisions.—*International Fraternal Alliance v. State*, 86 Md. 550, 39 Atl. 512, 40 L. R. A. 187. (See Code, art. 23, §§ 229, 242; *Id.* [vol. 3], art. 23, §§ 229, 242.)

#### § 690. Authority or license to do business.

#### § 691. Regulation and supervision of business.

##### *Cross-Reference.*

Regulation as to discrimination in rates, see ante, § 28.

(a) Where members of an association pay an admission fee, monthly dues, and assessments, as ordered from time to time, and from funds thus raised the association contracts to repay to the members certain sums in case of sickness or death, or at the expiration of a fixed number of years, such association does an insurance business within the meaning of Code 1888, art. 23, § 127, providing penalties for any person or association which shall do an insurance business without complying with the general regulations provided by that article for the transaction of such business.—*Order of In. Fra. Alliance v. State*, 77 Md. 547, 26 Atl. 1040. (See Code 1911, art. 23, § 192; *Id.* [vol. 3], art. 23, § 192.) [Cited and annotated in 38 L. R. A. 40, 55, as to whether benefit association is insurance company.]

#### § 692. Incorporation and organization.

##### *Cross-Reference.*

Charter or articles of incorporation as part of contract, see post, § 716.

#### § 693. Constitutions and by-laws.

##### *Cross-References.*

Constitution and by-laws as part of contract, see post, §§ 718, 719.

Impairment of obligation of contract, see "Constitutional Law," § 156.

(a) Though the rule that a statute is prospective in its operation, in the absence of an expressed intent to give it a retroactive force, applies to by-laws of corporations, yet the by-laws of mutual benefit societies will control existing members, though they are not expressed in retroactive terms, especially where the members agreed to be bound by such by-laws as might be enacted.—*Mathieu v. Mathieu*, 112 Md. 625, 77 Atl. 112.

(b) A provision of the constitution of a railroad relief association that, before the association will pay the beneficiary of the member killed the amount of benefits due, the person legally entitled to damages for the death shall release the railroad company from all claims for damages, held not so unreasonable as to be void.—*Fuller v. Baltimore & O. Emp. Relief Ass'n*, 67 Md. 433, 10 Atl. 237.

#### § 694. Membership.

(a) The courts will extend, to members of mutual benefit fraternal societies incorporated under the laws of Massachusetts, but residing in other states, the benefits accruing by reason of the statutes of Massachusetts to members residing in the latter state, since the ideas of mutuality and fraternity which form the basis of such societies require that all its members should be treated alike.—*Supreme Council of Royal Arcanum v. Brashears*, 89 Md. 624, 43 Atl. 866, 73 Am. St. Rep. 244. [Cited and annotated in 4 L. R. A. (N. S.) 637, on insured's duty to negative death or accident from excepted cause; in 11 L. R. A. (N. S.) 985, on statements as representations, though expressly denominated as warranties; in 23 L. R. A. (N. S.) 973, on conflict of laws as to insurance contracts.]

#### § 695. Officers and agents.

##### *Cross-Reference.*

Effect of receipts given by defaulting officer for money paid to him, see "Payment," § 54.

#### § 696. Powers of association in general.

##### *Cross-Reference.*

Estoppel to deny corporate powers, see "Corporations," § 383.

#### § 697. Superior, subordinate, and affiliated bodies.

##### *Cross-Reference.*

Suspension of subordinate body, see post, § 746.

(a) Act 1896, c. 331, provides that members of supreme bodies of benefit associations, to be qualified to vote, must represent a state, council, conclave, etc., and the number of members necessary for one representative shall be the unit of representation, and the number of times a state's membership is greater than this unit shall be its number of representatives in the supreme body. By the constitution of an order, each state was entitled to one representative for its first 500 members, two for its first 1,500, etc., and one additional for every 5,000 members in excess of 4,500. *Held*, that its unit of representation was 500, by which the membership of the state should be divided, to determine the number of its representatives.—*Supreme Lodge, Order of the Golden Chain v. Simering*, 88 Md. 276, 40 Atl. 723, 41 L. R. A. 720, 71 Am. St. Rep. 409. (See Code, art. 23, § 229, note.)

#### § 698. Special funds.

##### *Cross-References.*

Enforcement of judgment against particular fund, see post, § 831.

#### § 699. Reinsurance.

#### §§ 700-710. Insolvency and dissolution.

##### *Annotation.*

Distribution of surplus upon dissolution of mutual insurance company.—3 L. R. A. (N. S.) 653, note.

(a) Where a bill by policy holders of a beneficial association to dissolve it, on the ground of insolvency, does not allege that defendant has lost its power to collect by assessment, an averment by defendant, in its answer in another case, that, by reason of attacks on its credit, it has not been able to earn sufficient money to pay its policies as they fall due, is not an admission of insolvency.—*Barton v. International Fraternal Alliance*, 85 Md. 14, 36 Atl. 658. [Cited and annotated in 39 L. R. A. (N. S.) 1033, 1034, 1039, on inherent equity jurisdiction to appoint receiver or wind up corporation because of mismanagement or fraud.]

(b) Act 1894, c. 295, § 1480, directing the insurance commissioner to sue to enjoin a beneficial association from carrying on any business whenever it has failed to comply with certain sections of the act, and providing that no injunction shall be granted

by any court except on the commissioner's application, etc., does not affect the right conferred on stockholders and creditors by Code 1888, art. 23, § 264, as amended by act 1894, c. 263, to sue for the appointment of a receiver and the dissolution of an insolvent corporation.—*Barton v. International Fraternal Alliance*, 85 Md. 14, 36 Atl. 658. (See Code 1911, art. 23, §§ 78, 239; *Id.* [vol. 3.] art. 23, §§ 229, et seq.; act 1916, c. 343, p. 718.) [Cited and annotated, see supra.]

(c) The validity of the claims of holders of matured certificates of a mutual benefit society is not affected by the insolvency of the society, occurring after such certificates matured.—*Failey v. Fee*, 83 Md. 83, 34 Atl. 839, 32 L. R. A. 311. [Cited and annotated in 38 L. R. A. 99, 104, on distribution of assets of insolvent insurance company; in 47 L. R. A. 681, on conflict between by-laws and certificates or policy.]

#### (B) THE CONTRACT IN GENERAL.

##### *Cross-References.*

Parol or extrinsic evidence to contradict or vary contract, see "Evidence," § 405.

Parol or extrinsic evidence to show mistake in contract, see "Evidence," § 433.

#### § 711. Nature of the contract.

(a) Where a lodge issues endowment certificates to each member, entitling the wife, children, or other beneficiary to a certain sum on the death of the member, such certificates are in all essentials policies of life insurance.—*Goodman v. Jedidjah Lodge*, 67 Md. 117, 9 Atl. 13, 13 Atl. 627. [Cited and annotated in 38 L. R. A. 34, 55, as to whether benefit association is insurance company.]

#### § 712. What law governs.

##### *Cross-Reference.*

Insurance in general, see ante, §§ 125, 147.

(a) Where a resident of Maryland became a member of a beneficial association of New York, which association had an agent in Maryland, who received dues and assessments and paid claims of beneficiaries in such state, the contract of insurance was to be performed in Maryland; and hence the rights of different claimants to the beneficial fund, on the decease of the member, were to be determined by the laws of Maryland.—*Expressman's Mut. Ben. Ass'n v. Hurlock*, 91 Md. 585, 46 Atl. 957, 80 Am. St.

Rep. 470. [Cited and annotated in 63 L. R. A. 843, 847, 854, 857, on conflict of laws as to insurance contracts; in 17 L. R. A. (N. S.) 1084, on disposition of benefit fund on failure of beneficiary.]

(b) The fact that a policy given in Maryland is made by its terms a New York contract does not require the courts of Maryland, when called upon for construction, to look to New York for authority.—*Robinson v. Hurst*, 78 Md. 59, 26 Atl. 956. [Cited and annotated in 30 L. R. A. 610, as to who are "legal representatives" within life policies; in 53 L. R. A. 354, on moral obligation as consideration; in 63 L. R. A. 859, on conflict of laws as to insurance contracts; in 64 L. R. A. 859, on execution by will, of power, or appointment; in 67 L. R. A. 550, on homicide to prevent criminal or unlawful acts; in 26 L. R. A. (N. S.) 522, on moral obligation as consideration for express promise.]

§§ 713-715. (See Analysis.)

§ 716. Charter or articles of incorporation as part of contract.

*Cross-Reference.*

Provisions as to actions for benefits, see post, §§ 804, 805.

§ 717. Constitution, by-laws, or rules as part of contract.

*Cross-References.*

Provisions as to actions for benefits, see post, §§ 804, 805.

Provisions as to beneficiary, see post, § 771.

Conformity of findings, as to existence of by-laws, to pleadings, see "Trial," § 396.

§ 718.—Existing provisions.

(a) The constitution and by-laws of a fraternal mutual benefit society is a component part of the contract of insurance issued by it to its members.—*Supreme Council of Royal Arcanum v. Brashears*, 89 Md. 624, 43 Atl. 866, 73 Am. St. Rep. 244. [Cited and annotated in 4 L. R. A. (N. S.) 637, on insured's duty to negative death or accident from excepted cause; in 11 L. R. A. (N. S.) 985, on statements as representations, though expressly denominated as warranties; in 23 L. R. A. (N. S.) 973, on conflict of laws as to insurance contracts.]

§ 719.—Subsequent provisions or amendments.

(a) A reserved power to amend the by-laws of an association or a condition in the certificate binding the insured to compliance with subsequently adopted laws, rules, and

regulations will authorize the adoption of a law reducing the benefit payable in case of suicide of the member while sane, but will not permit such a law as to suicide while insane.—*Supreme Conclave I. O. H. v. Rehan*, 119 Md. 92, 85 Atl. 1035, 46 L. R. A. (N. S.) 308.

(b) A member of a mutual benefit association, who stipulates in his application for membership to conform to the by-laws in force, or which may subsequently be adopted, consents in advance to all reasonable changes in the by-laws not impairing vested rights.—*Mathieu v. Mathieu*, 112 Md. 625, 77 Atl. 112.

(c) A mere designation of a beneficiary by a member of a mutual benefit society does not confer on the beneficiary any vested right in the funds, payable on the death of the member; and hence a beneficiary may not object to a subsequent by-law relating to change of beneficiaries.—*Mathieu v. Mathieu*, 112 Md. 625, 77 Atl. 112.

(d) An amended by-law of a mutual benefit association, stipulating that the subsequent marriage of an unmarried member shall make his designation of a beneficiary void, but he may redesignate the same beneficiary, and on his death, without making a redesignation, the benefit shall be paid in accordance with a classification prescribed in a by-law, imposes no hardship on an existing member and is reasonable and operates on him and his certificate, especially where his application stipulated that he would conform to by-laws subsequently adopted.—*Mathieu v. Mathieu*, 112 Md. 625, 77 Atl. 112.

§§ 720, 721. (See Analysis.)

§ 722. Validity in general.

(a) A certificate of a mutual benefit society provided that, if the holder obeyed all lawful commands of the order, complied with the laws in force or thereafter enacted, and paid all assessments and demands legally made on the certificate for the full terms of seven years, then the said member should be entitled to a sum not exceeding \$1,000. Held, that, there being nothing on the face of the contract to show it impossible of execution, it will not be declared unenforceable in equity.—*Failley v. Fee*, 83 Md. 83, 34 Atl. 839, 32 L. R. A. 811. [Cited



and annotated in 88 L. R. A. 99, 104, on distribution of assets of insolvent insurance company; in 47 L. R. A. 681, on conflict between by-laws and certificates or policy.]

(b) The contract thus expressed, being perfectly valid on its face, will not be set aside because the means adopted to execute it are impracticable.—*Failey v. Fee*, 88 Md. 88, 84 Atl. 889, 32 L. R. A. 311. [Cited and annotated, see supra.]

### § 723. Misrepresentation, fraud, or breach of warranty.

(a) Statements made by an applicant for life insurance, which by the terms of the policy are made a part of the contract with the insurance company, but not therein stipulated to be warranties, are not to be regarded as warranties, which cast upon the plaintiff the burden of proving them, but are to be regarded as representations, the materiality and truth of which are for the jury.—*Supreme Council of Royal Arcanum v. Brashears*, 89 Md. 624, 43 Atl. 866, 73 Am. St. Rep. 244. [Cited and annotated in 4 L. R. A. (N. S.) 637, on insured's duty to negative death or accident from excepted cause; in 11 L. R. A. (N. S.) 985, on statements as representations, though expressly denominated as warranties; in 23 L. R. A. (N. S.) 973, on conflict of laws as to insurance contracts.]

(b) Where an application for membership in the "Relief Feature" of a railroad company makes answers to questions therein warranties, the "truth whereof shall be a condition of payment of the benefits," and limits the beneficiaries that can be named by the applicant to his wife and children, if married, and his father and mother, if single, a false declaration by an applicant that a person whom he names as his beneficiary is his wife vitiates the agreement.—*Smith v. Baltimore & O. R. Co.*, 81 Md. 412, 82 Atl. 181. [Cited and annotated in 47 L. R. A. (N. S.) 259, on insurance on life in favor of paramour; in 11 L. R. A. (N. S.) 192, on contract for servant's election between relief fund and action for damages.]

(c) Massachusetts Rev. Stat., c. 115, § 8, as amended by act 1882, c. 195, authorizes insurance associations to be formed "for the purpose of assisting the widows, orphans, or other relatives of deceased members, or any persons, dependent on deceased members." Deceased was insured in an association organized under this chapter,

whose object was declared by its constitution to be to establish a benefit fund, from which, on the death of a member who had complied with all lawful requirements, a sum should be paid "to the family, orphans, or dependents." Deceased, in his application, agreed that any untrue or fraudulent statement therein should forfeit the rights of himself, his family or dependents. Held, that a policy obtained on a statement in the application that the beneficiary was deceased's niece, when in fact she was not, but had simply called him uncle, and been treated as a niece, was void.—*Supreme Council, A. L. H. v. Green*, 71 Md. 263, 17 Atl. 1048, 17 Am. St. Rep. 527.

### § 724. Estoppel or waiver as to defects or objections.

(a) The application of deceased was witnessed by a special instituting officer, who was present at the institution of this subordinate council, and performed duties of the secretary of the subordinate council, as such officer had not been elected. The instituting officer was charged with no duty respecting the application, except to see that it was in proper form when it passed to the supreme council, of which he was no officer. The grand council, of which he was an officer, had nothing to do with the benefit fund, nor was he by law charged with the duty of instituting councils, or receiving applications for membership. It was no part of his duty to pass on the qualifications of beneficiaries, and there was no officer on whom such duty did devolve. This officer had heard that the beneficiary was not deceased's niece, but testified that he had no personal knowledge on the subject, and did not recollect paying any attention to the statement in the application to the contrary. Held, that the association was not estopped from showing that the beneficiary was not the niece of deceased.—*Supreme Council, A. L. H. v. Green*, 71 Md. 263, 17 Atl. 1048, 17 Am. St. Rep. 527.

### § 725. Modification and reformation.

### § 726. Construction and operation in general.

(a) A lodge issued endowment certificates to each member, which entitled his wife and children, or other beneficiary whom

he might name, to \$1,000 upon his death. *Held*, such certificates being in all essentials insurance policies, the courts will adjudicate the rights of the members in reference to such certificates upon the same principles as apply to insurance companies.—*Goodman v. Jedidjah Lodge*, 67 Md. 117, 9 Atl. 13, 13 Atl. 627. [Cited and annotated in 38 L. R. A. 34, 55, as to whether benefit association is insurance company.]

§ 726½. Classification of risk.

§ 727. Assignment or other transfer.

*Cross-Reference.*

Defective change of designation of beneficiary as assignment, see post, § 784.

§ 728.— In general.

(a) The assignment of a certificate of an association whose object is the payment of a fund to "widows, orphans or beneficiaries" of members, the certificate making the fund payable to the beneficiary or her "assigns," is not contrary to the objects of the association.—*Clogg v. MacDaniel*, 89 Md. 416, 43 Atl. 795. [Cited and annotated in 3 L. R. A. (N. S.) 937, on validity of assignment of interest in life insurance to one paying premiums.]

§ 729.— As collateral security.

(b) Where the constitution and laws of a fraternal insurance order provided that no policy should be made payable to a creditor, nor be assigned; that, in order to change a beneficiary, an old policy should be surrendered for a new one; and that those who could be named as beneficiaries are the family and dependents of the insured—assignment of a policy to a creditor as security for a debt by writings entered on the policy and signed by the insured gave the creditor no rights to the insurance fund on the death of the insured.—*Dale v. Brumbly*, 96 Md. 674, 54 Atl. 655. [Cited and annotated in 17 L. R. A. (N. S.) 1087, on disposition of benefit fund on failure of beneficiary; in 25 L. R. A. (N. S.) 815, on right of member of benefit society to use fund for own benefit.]

(c) Under act 1894, p. 404, c 295, providing that a benefit certificate in a fraternal insurance order shall not be assignable, except to those named in the act, among whom a creditor is not included, and that the fund shall not be liable for the payment of any debt of the certificate holder,

an assignment of such certificate or policy to a creditor by a writing entered thereon and signed by the policy holder does not entitle the creditor to the benefit fund on the death of the policy holder.—*Dale v. Brumbly*, 96 Md. 674, 54 Atl. 655. (See Code, art. 23, § 229; *Id.* [vol. 3], §§ 229, et seq.) [Cited and annotated, see supra.]

§ 730. Cancellation, surrender, abandonment, or rescission.

*Cross-Reference.*

Withdrawal of member, see ante, § 694.

(C) DUES AND ASSESSMENTS.

§§ 731-739. (See Analysis.)

§ 740. Mode and sufficiency of payment.

*Cross-References.*

Constitutionality of acts exempting from liability for debts, see "Exemptions," § 3.

Rights of widow of insured as heir, see "Descent and Distribution," § 52.

Validity of provision in constitution as to control of benefits by will as contravening public policy, see "Contracts," § 108.

§§ 741-743. (See Analysis.)

(D) FORFEITURE OR SUSPENSION.

*Cross-Reference.*

Construction to avoid forfeiture, see ante, § 726.

§ 744. Nature and grounds in general.

§ 745. Statutory provisions against forfeiture.

*Cross-Reference.*

Provisions relating to suicide, see post, § 788.

§ 746. Effect of suspension of subordinate body.

(a) A lodge issued endowment certificates to each member, which entitled his wife and children, or other beneficiary whom he might name, to \$1,000 upon his death. *Held*, such certificates being in all essentials insurance policies, the courts will adjudicate the rights of the members in reference to such certificates upon the same principles as apply to insurance companies. As long as the member paid his dues and remained in good standing, his certificate could not be forfeited by a forfeiture of the charter of the lodge declared by the general order, but might be for his failure or refusal to pay such dues; and in this case the minority members having seceded from the lodge and

refused to pay dues, they thereby forfeited their certificates.—*Goodman v. Jedidjah Lodge No. 7*, 67 Md. 117, 9 Atl. 13, 13 Atl. 627. [Cited and annotated, see supra, § 726.]

**§ 747. Effect of expulsion or suspension of member.**

(a) Plaintiff sent his dues by mail to the C. lodge, of which he had been a member, but they were not received because of the absence of the local officer. In the preceding month plaintiff, without his knowledge or consent, had been transferred to the M. lodge. The C. lodge refused his dues because of his alleged delinquency, and the M. lodge refused them because it had not accepted the transfer. The officer of the C. lodge told him that a mistake had been made in suspending him, and that he thought the lodge would readmit him, and he filled out and returned a blank given him for readmission. He was notified to attend the C. lodge on a certain date, but the reason therefor was not stated, and his work carried him to a distant city on the date mentioned. Afterwards he attempted to join another lodge, but was rejected for physical disqualification, and he wrote a letter requesting that the dues which had been received after his expulsion be refunded. Held, that, as plaintiff did not know what his rights were, and was pursuing such course as he was advised was proper for the restoration of his rights, he had not waived the illegality of his expulsion.—*Dague v. Grand Lodge Brotherhood of Railroad Trainmen*, 111 Md. 95, 73 Atl. 735. [Cited and annotated in 52 L. R. A. (N. S.) 843, on conclusiveness of decisions of mutual benefit associations directly upon claims for benefits: and duty to exhaust remedies within association.]

**§ 748. Violations of terms or conditions of contract.**

*Cross-Reference.*

Violation of contract by beneficiary, see post, § 798.

**§ 749. Nonpayment of dues or assessments.**

**§ 750.— Default as a ground for forfeiture in general.**

(a) A beneficiary association's rule that no member owing 13 weeks' or more dues shall be entitled to weekly or death benefits till 13 weeks after paying all arrears is a

reasonable and valid one.—*Littleton v. Wells & McComas Council, No. 14*, J. O. U. A. M., 98 Md. 453, 56 Atl. 798.

**§ 751.— Notice of time for payment.**

*Annotation.*

Necessity that notice of maturity of premiums or assessments sent through the mail be received.—7 L. R. A. (N. S.) 253, note.

**§ 752.— Extension of time for payment.**

**§ 753.— Sufficiency of payment or tender to prevent forfeiture.**

(a) Under the by-laws of a fraternal insurance association providing that the supreme conclave was not responsible for sick benefit regulations adopted by subordinate conclaves, the fact that a subordinate conclave owed insured for sick benefits a greater sum than that due on his monthly assessment will not defeat the right of the general order to set up nonpayment as a defense.—*McCann v. Supreme Conclave, I. O. H.*, 119 Md. 655, 87 Atl. 383, 46 L. R. A. (N. S.) 537.

(b) The payment of his dues by a member of a beneficiary association, at the time required by its by-laws, to an officer not authorized to collect the dues, though he frequently did receive them from members, is not a compliance with the association's requirements, where the officer failed to pay the dues at the proper time to the person authorized to collect them.—*Littleton v. Wells & McComas Council, No. 14*, J. O. U. A. M., 98 Md. 453, 56 Atl. 798.

(c) Where the grand lodge of a beneficial association insures the members thereof, but the contracts of insurance are effected and dues and assessments paid solely through the agency of the subordinate lodges, a constitutional provision of the grand lodge prohibiting the subordinate lodges or officers thereof from acting as agents of the grand lodge except by express authority does not prevent a subordinate lodge from binding the grand lodge by acts in reference to the collection of assessments.—*Schlosser v. Grand Lodge of Brotherhood of Railroad Trainmen*, 94 Md. 362, 50 Atl. 1048.

# § 754.—Excuses for nonpayment.

## Annotation.

Effect of incapacitating illness or insanity on failure to pay premium when due.—12 L. R. A. (N. S.) 319; 46 L. R. A. (N. S.) 537, notes.

(a) Where an officer of defendant insurance order stated that insured was not a fit person to belong to the order, and that if compelled he would institute proceedings for expulsion, but that the best way was to let the insured lapse out, and the beneficiary's agent, who was to pay the installment, stated that he would submit the matter to her, and she made no further offer to pay, the defense of nonpayment is available; there being no refusal to receive dues.—*McCann v. Supreme Conclave, I. O. H.*, 119 Md. 655, 87 Atl. 383, 46 L. R. A. (N. S.) 537.

(b) Where the by-laws of a fraternal insurance association making nonpayment of dues a defense did not except nonpayment owing to the sickness or insanity of insured, the fact that the insured was in an insane asylum at the time his dues lapsed cannot be set up by the beneficiary to defeat the defense of nonpayment.—*McCann v. Supreme Conclave, I. O. H.*, 119 Md. 655, 87 Atl. 383, 46 L. R. A. (N. S.) 537.

(c) Plaintiff's dues for January were sent by mail, as was the custom of absent members, and the letter was taken to the house of the financier of the subordinate lodge. The house was found locked, and the letter was taken back to the post office, and notice sent to the financier, who did not call for it until January 15th. In the preceding month of December plaintiff had been transferred to another lodge, which thereafter refused his dues because it had not accepted the transfer, and the transferring lodge thereafter refused his dues because of his alleged delinquency. *Held*, that the default was due to the negligence of the local officer, and the company could not avail itself thereof to evade payment under the certificate.—*Dague v. Grand Lodge, Brotherhood of Railroad Trainmen*, 111 Md. 95, 73 Atl. 735. [Cited and annotated, see *supra*, § 747.]

(d) The constitution of the subordinate lodges of a life association provided that a failure to pay dues and assessments should

forfeit the rights of members, and required that members changing their domiciles should likewise change their membership. The transfer was to be by card issued by the lodge at the old domicile on payment of a month's dues, good for the month in which it was issued, but which, on being filed with the lodge at the new domicile, should constitute an application membership to continue in the lodge of the former domicile if the application by card was not accepted. A member, on changing his domicile, obtained a card, and paid the fees therefor, and presented the card to the lodge at his new domicile, but it was not acted upon because the lodge held no meetings, though its constitution required two meetings a month. This lodge afterwards refused to accept dues from the insured because it was claimed that the card had expired. The lodge issuing the card also refused to accept dues because it claimed that the insured was a member of the lodge at his new domicile. Insured died before the difficulty was settled. *Held*, that the misconduct of the lodge at his new domicile in failing to act on the card, which prevented insured from paying his dues, would prevent the grand lodge from relying on the defense of nonpayment of dues in an action on the certificate.—*Schlosser v. Grand Lodge of Brotherhood of Railroad Trainmen*, 94 Md. 362, 50 Atl. 1048.

(e) A member of a mutual benefit association is not relieved from the obligation to pay the death assessment within 30 days, by the fact that during all that time he was deliriously sick and unable to attend to business.—*Yoe v. Howard Masonic Mut. Ben. Ass'n*, 63 Md. 86. [Cited and annotated in 49 L. R. A. (N. S.) 459, on presumption as to receipt of communication sent through mail; in 12 L. R. A. (N. S.) 320, on effect of incapacitating illness or insanity on failure to pay insurance premium; in 17 L. R. A. (N. S.) 248, on termination of member's rights in mutual benefit society for non-payment of dues without affirmative action.]

§§ 755-757. (See Analysis.)

§§ 758-765. Reinstatement.

## Cross-Reference.

Remedy by motion in suit to enjoin collection of assessments, see "Motions," § 2.

**(E) BENEFICIARIES AND BENEFITS.****Cross-Reference.**

Exemption of insurance from legal process, see "Exemptions," §§ 50, 57.

**§ 766. Status of beneficiaries in general.****§ 767. Insurable interest of beneficiary.**

(a) One who has an insurable interest in the life of another, and has taken out a policy thereon, may assign such policy to one who has no such insurable interest.—*Souder v. Home Friendly Soc.*, 72 Md. 511, 20 Atl. 137. [Cited and annotated in 3 L. R. A. (N. S.) 336, as to who are members of insured's "family"; in 3 L. R. A. (N. S.) 937, on validity of assignment of interest in life insurance to one paying premiums; in 6 L. R. A. (N. S.) 129, on validity of assignment to one without insurable interest in life.]

**§§ 768-771. Persons who may be beneficiaries.****Annotation.**

Who is a "dependent" within statute or rules defining beneficiaries of mutual benefit societies.—2 L. R. A. (N. S.) 653; 36 L. R. A. (N. S.) 208; 37 L. R. A. (N. S.) 1191, notes.

Right of member of benefit society to use fund for his own benefit.—25 L. R. A. (N. S.) 814, note.

Who is member of the "family" within contract of benefit society.—3 L. R. A. (N. S.) 334, note.

(a) Under Code 1904, art. 23, § 210, one with whom a member lived illicitly for 10 years on separation from his wife, who survived him, is not entitled to the benefits, though designated as wife in the certificate.—*Meinhardt v. Meinhardt*, 117 Md. 426, 83 Atl. 715. (See Code 1911, art. 23, § 229; Id. [vol. 3], §§ 229, et seq.) [Cited and annotated in 47 L. R. A. (N. S.) 256, on insurance on life in favor of paramour.]

(b) Under Code 1904, art. 23, § 210, held, that a fraternal insurance society cannot be estopped to deny the right of one who lived illicitly with an insured member to the proceeds of the certificate, because it received dues from the member, where it did not know until after his death that she was not his lawful wife.—*Meinhardt v. Meinhardt*, 117 Md. 426, 83 Atl. 715. (See Code 1911, art. 23, § 229; Id. [vol. 3], §§ 229, et seq.) [Cited and annotated, see supra.]

(c) Where the classes of persons to whom fraternal insurance proceeds may be paid

are prescribed by statute or charter, neither the society nor a member, nor both, can divert benefits to any other class.—*Meinhardt v. Meinhardt*, 117 Md. 426, 83 Atl. 715. (See Code, art. 23, § 229; Id. [vol. 3], §§ 229, et seq.) [Cited and annotated, see supra.]

**§§ 772-775. Designation of beneficiary.**

(a) The constitution of a benevolent society provided, upon the death of any member, for the payment of a fixed sum to the widow and children of such member, or such persons to whom the deceased might dispose of the same by will or assignment, but that if there were no widow or children, or the deceased should have made no disposition by will or assignment of the sum accruing upon his death, then the board of said society should appropriate such sum as might be necessary for funeral expenses and all excess of money accruing from the death of such member should go to the permanent fund of the association. Held, that the will of a member bequeathing the entire residue of his estate to his sisters and to a friend after the payment of his debts was not a valid exercise of the *jus disponendi* given by the constitution; the intention to exercise it not being expressed, and it not appearing that there was no other estate upon which it might operate.—*Maryland Mut. Benev. Soc., I. O. O. R. M., v. Clendinen*, 44 Md. 429, 22 Am. Rep. 52. [Cited and annotated in 64 L. R. A. 876, on execution by will, of power of appointment; in 17 L. R. A. (N. S.) 1083, 1085, on disposition of benefit fund on failure of beneficiary; in 42 L. R. A. (N. S.) 1167, on right to designate beneficiary of benefit insurance by will.]

**§ 776. Failure of beneficiaries.****Annotation.**

Disposition of fund in mutual benefit society upon failure of beneficiary.—17 L. R. A. (N. S.) 1083, note.

**§ 777. Invalid or ineffective designation.****Annotation.**

Effect of joining ineligible with eligible beneficiary in benefit certificate.—34 L. R. A. (N. S.) 1192, note.

(a) Where a benefit certificate in a fraternal insurance order was payable to the "estate" of the assured, and the rules of the order provide that, if the designation fails,

the benefits shall be distributed as in case of intestacy, the fund would be distributed to the wife and children of the assured, whether the designation of the "estate" as beneficiary was illegal or not.—*Dale v. Brumbly*, 96 Md. 674, 54 Atl. 655. [Cited and annotated in 17 L. R. A. (N. S.) 1087, on disposition of benefit fund on failure of beneficiary; in 25 L. R. A. (N. S.) 815, on right of member of benefit society to use fund for own benefit.]

§ 778. Failure to make designation.

§ 779. Change of beneficiary.

§ 780.— Right to change in general.

§ 781.— Consent of association.

*Annotation.*

Necessity of insurer's consent to change of beneficiary.—L. R. A. 1915A, 109, note.

§ 782.— Rights of beneficiary previously designated.

§ 783.— Vested interest of beneficiary.

*Cross-Reference.*

Assignment, see ante, § 728.

§ 784.— Mode of changing designation.

*Annotation.*

Effect of death of assured before contemplated change of beneficiary is complete.—L. R. A. 1915A, 580, note.

(a) Under Code 1904, art. 23, §§ 210-223, and the by-laws of a fraternal benefit society, a member may not by will dispose of a death benefit due under a certificate of membership.—*Mineola Tribe No. 114, I. O. R. M., v. Lizer*, 117 Md. 136, 83 Atl. 149, 42 L. R. A. (N. S.) 1170. (See Code 1911, art. 23, §§ 229-242; Id. [vol. 3], §§ 229, et seq.)

(b) Under Code 1904, art. 23, § 210, and the by-laws of a fraternal order, a will of a member disposing of the death benefit due under his certificate of membership held not an "attested order," and the beneficiary in the will is not entitled to the benefit.—*Mineola Tribe No. 114, I. O. R. M. v. Lizer*, 117 Md. 136, 83 Atl. 149, 42 L. R. A. (N. S.) 1170. (See Code 1911, art. 23, § 229; Id. [vol. 3], §§ 229, et seq.)

§ 785. Death of beneficiary before insured.

§§ 786-788. Loss or contingency on which benefits become payable.

(a) Where a benefit certificate contains no provision exempting the society from liability in such case, the fact that the assured committed suicide is no defense to an action on the certificate, unless it can be shown that assured intended suicide when he made application for the certificate.—*Supreme Conclave, I. O. H., v. Miles*, 92 Md. 613, 48 Atl. 845, 84 Am. St. Rep. 528. [Cited and annotated in 8 L. R. A. (N. S.) 1125, on suicide of insured while sane as defense in absence of provision.]

§§ 789-792. (See Analysis.)

§ 793. Rights of beneficiaries to proceeds.

*Cross-References.*

Assignees, see ante, §§ 728, 729.

Who may be beneficiaries, see ante, §§ 769-771.

Testimony, in action to determine, as to transactions with persons since deceased, see "Witnesses," § 140.

(a) Under Code 1904, art. 23, § 210, where proceeds of a certificate are claimed by the member's lawful wife, from whom he was separated, and by a woman with whom he lived illicitly, who was designated as his "wife" in the certificate, and the proceeds are deposited in court by the society under interpleader, to be paid as may be determined, the proceeds held properly awarded to the lawful widow, in the absence of a by-law or rule to the contrary.—*Meinhardt v. Meinhardt*, 117 Md. 426, 83 Atl. 715. (See Code 1911, art. 23, § 229; Id. [vol. 3], §§ 229, et seq.) [Cited and annotated in 47 L. R. A. (N. S.) 256, on insurance on life in favor of paramour.]

§ 794. (Omitted from the classification used herein.)

§ 795. Rights of representatives of insured.

(a) The fund assigned by the charter of a benevolent society to the widow and children of a deceased member or his legatee or assignee, is not assets recoverable by his administrator or executor.—*Maryland Mut. Benev. Soc., I. O. O. R. M. v. Clendinen*, 44 Md. 429, 22 Am. Rep. 52. [Cited and annotated, see supra, §§ 772-775.]

### § 796. Rights of representatives of beneficiary.

(a) The administrator of a beneficiary named in a certificate issued by a mutual benefit life insurance association is a proper person to whom the proceeds of the certificate should be paid, though the beneficiary died before insured, where the by-laws provided that insured should designate the beneficiary, and could change the same at will, and he failed to designate another beneficiary after the death of the one named.—*Expressman's Mut. Ben. Ass'n v. Hurlock*, 91 Md. 585, 46 Atl. 957, 80 Am. St. Rep. 470. [Cited and annotated in 63 L. R. A. 843, 847, 854, 857, on conflict of laws as to insurance contracts; in 17 L. R. A. (N. S.) 1084, on disposition of benefit fund on failure of beneficiary.] *Thomas v. Cochran*, 89 Md. 390, 43 Atl. 792, 46 L. R. A. 160. [Cited and annotated in 17 L. R. A. (N. S.) 1084, on disposition of benefit fund on failure of beneficiary; in 42 L. R. A. (N. S.) 1164, on right to designate beneficiary of benefit insurance by will.]

### § 797. Rights of creditors.

#### Cross-References.

Rights of assignee as security, see ante, § 729.

Rights of beneficiary, see ante, § 782.

Exempting benefits to be paid by fraternal beneficiary association as denying the equal protection of the laws, see "Constitutional Law," § 249.

Exemption of proceeds from legal process, see "Exemptions," § 50.

(a) A creditor who takes out insurance certificates amounting to \$6,500, on the life of his debtor, who owes him \$1,000, the insurance being taken out in mutual aid associations, where the amount to be realized depends on the number and solvency of the members, and the creditor paying the mortuary dues and assessments, and actually realizing only \$2,124.82 on the certificates, on the debtor's death, is entitled to retain the balance remaining, after deducting the debt, interest, and expenses.—*Rittler v. Smith*, 70 Md. 261, 16 Atl. 890, 2 L. R. A. 844. [Cited and annotated in 67 L. R. A. 550, on homicide to prevent criminal or unlawful acts; in 3 L. R. A. (N. S.) 937, on validity of assignment of interest in life insurance to one paying premiums; in 6 L. R. A. (N. S.) 129, on validity of assignment to one without insurable interest in life.]

### § 798. Payment of benefits.

(a) The charter of a mutual benefit society provided that benefits should be paid as provided for either in the by-laws or in the certificate. The certificate provided that benefits should be paid at the end of seven years, and the by-laws provided that the benefit, when found to be correct, should be adjusted within 90 days from the expiration of the certificate. *Held*, that in determining the time of payment the provisions of the certificate should govern.—*Failley v. Fee*, 83 Md. 83, 34 Atl. 839, 32 L. R. A. 311. [Cited and annotated in 38 L. R. A. 99, 104, on distribution of assets of insolvent insurance company; in 47 L. R. A. 681, on conflict between by-laws and certificate or policy.]

### §§ 799-801. (See Analysis.)

#### (F) ACTIONS FOR BENEFITS.

#### Cross-References.

See "Submission of Controversy," § 4.

Abatement by another action pending, see "Abatement and Revival," § 8.

Effect of stipulation in suit, see "Stipulations," §§ 14, 18.

Right of action by beneficiary against one contracting with association to pay claim, see "Contracts," § 187.

### § 802. Nature and form of remedy.

(a) Under a certificate entitling the beneficiary to mortuary benefits to be assessed on the members, an action at law will lie against the society for failure to make such assessment.—*Earnshaw v. Sun Mut. Aid Soc.*, 68 Md. 465, 12 Atl. 884, 6 Am. St. Rep. 460. [Cited and annotated in 47 L. R. A. 706, 708, 710, as to when contractual limitation of time for suit on policy begins to run; in 3 L. R. A. (N. S.) 1188, on effect of injunction against suing on running of limitations.]

### §§ 803-805. Provisions of charter, by-laws, or certificate of membership.

(a) Where defendant in a mutual benefit insurance society denied its liability, disallowed the claim, and refused appeal to the beneficiary board, insured had a right to bring suit, and defendant was estopped to rely on the provisions of the constitution relating to appeal, or to proofs of loss.—*Dague v. Grand Lodge Brotherhood of Railroad Trainmen*, 111 Md. 95, 73 Atl. 735. [Cited and annotated in 52 L. R. A. (N. S.) 843, on conclusiveness of decisions of mutual

benefit associations directly upon claims for benefits; and duty to exhaust remedies within association.]

(b) The laws of a beneficiary association gave to any "member" an appeal from any "action" of his state or subordinate council within three months from the date of such "action" by presenting his appeal to the secretary of the council whose action was appealed from. The secretary was required to forward the appeal at the next meeting, with a transcript of the minutes, within 10 days after reporting the appeal to the council. Another provision required that appellant or his beneficiaries should exhaust all regular methods of appeal, and that the action of the several bodies passing thereon should be binding until reversed by the body to which the last appeal was taken. On the death of a member it merely appeared that the council drew an order on its treasury for \$30, to be paid to his beneficiary, and that the beneficiary took no action as to the offer of \$30. It did not appear that she was told or knew that the offer was the result of any decision made on her claim, or that she had any right of appeal which she was required to exhaust before resorting to the courts. *Held*, that the beneficiary was not, by failure to appeal under the laws of the order, precluded from resort to the courts.—*Wells & McComas Council, No. 14, J. O. U. A. M. v. Littleton*, 100 Md. 416, 60 Atl. 22. [Cited and annotated in 8 L. R. A. (N. S.) 918, on validity of requirement for exhausting remedies within benefit society before resort to courts.]

(c) A contract between a beneficial association and a member was made with reference to the by-laws and regulations of the association. One of the by-laws provided that any beneficiary considering himself aggrieved by the decision of the grand executive committee in respect to a claim for benefits must appeal to the grand council. *Held*, that a beneficiary who failed to appeal as provided for in the by-laws could not maintain an action at law on her claim.—*Wiegand v. Fraternities Accident Order*, 97 Md. 443, 55 Atl. 530. [Cited and annotated in 8 L. R. A. (N. S.) 916, on validity of requirement for exhausting remedies within benefit society before resort to courts.]

## § 806. Grounds of action.

## § 807. Conditions precedent in general.

### Cross-Reference.

Restoration of money received as accord and satisfaction as prerequisite to action for balance, see "Accord and Satisfaction," § 22.

(a) Where a member of a railroad relief association whose constitution provided that the railroad's liability should be released before the benefit should be paid, had designated his mother as his beneficiary, and upon his death his wife and minor child, the persons legally entitled to damages, did not release the railroad company, but brought suit, and recovered damages by a compromise, *held*, that the mother had no right of action against the relief association for the benefits.—*Fuller v. Baltimore & O. Emp. Relief Ass'n*, 67 Md. 433, 10 Atl. 237. [Cited and annotated in 10 L. R. A. (N. S.) 199, on validity of provision of railroad relief department for forfeiture of benefits in case of suit against company; in 11 L. R. A. (N. S.) 184, 192, 194, on contract for servant's election between relief fund and action for damages.]

## §§ 808-811. (See Analysis.)

## § 812. Limitations.

### Cross-Reference.

Benefit of limitations as depending on designation of agent for service of process on foreign association, see "Corporations," § 667.

(a) Where the certificate of a mutual aid society provides that all suits to recover claims under it are to be begun within six months after death of the assured, and the beneficiary is enjoined from receiving payment until the six months have expired suit may be brought after the removal of the injunction at any time within the statute of limitations.—*Earnshaw v. Sun Mut. Aid Soc.*, 68 Md. 465, 12 Atl. 884, 6 Am. St. Rep. 460. [Cited and annotated, see *supra*, § 802.]

## § 813. Parties.

## § 814. Process and appearance.

### Cross-References.

Service by publication, see "Process," § 86.

Statement of conclusions in affidavit to set aside service on managing agent of company, see "Affidavits," § 17.

## § 815. Pleading.

### Cross-Reference.

Exemption from general laws regulating insurance, see *ante*, § 688.



(a) In an action against a benefit association by a beneficiary of a deceased member, an answer to the complaint that a member committed suicide was demurrable, where it did not allege that the member was not insane at the time, where a by-law, providing that no full benefit would be paid where the member committed suicide, was not binding on such beneficiary if the member committed suicide while insane.—*Supreme Conclave I. O. H. v. Rehan*, 119 Md. 92, 85 Atl. 1035, 46 L. R. A. (N. S.) 308.

(b) In an action against a beneficiary association, the first count of the declaration was for money had and received for the use of the plaintiff from certain affiliated associations. The secretary of one of such associations, as a witness, was asked whether a printed copy of the by-laws was an authorized edition. The receipt by the defendant for the use of the member's beneficiary of \$250 from the association represented by the witness was admitted. *Held*, that an objection to the question on the ground of variance between the proof offered and the averments of the declaration was properly overruled.—*Wells & McComas Council, No. 14, J. O. U. A. M. v. Littleton*, 100 Md. 416, 60 Atl. 22. [Cited and annotated, see *supra*, §§ 803-805.]

(c) In an action on a railroad relief association certificate, defendant having averred that certain parties entitled to damages on account of the accident had brought suit against the railroad company, and had recovered damages, and had not released the company, a replication thereto alleging that the accident was not the result of any negligence of the company, and that the parties were not entitled to damages unless there was such negligence, is not a sufficient replication, as it does not negative the material parts of the plea.—*Fuller v. Baltimore & O. Emp. Relief Ass'n*, 67 Md. 433, 10 Atl. 237. [Cited and annotated, see *supra*, § 807.]

### § 816. Evidence.

#### Cross-Reference.

Effect of stipulation in suit, see "Stipulations," § 14.

#### Admissibility.

Declarations of insured as evidence against beneficiary, see "Evidence," § 252.

Parol or extrinsic evidence to contradict or vary contracts of insurance, see "Evidence," §§ 405, 411, 413, 414, 417, 418, 419, 424, 427.

Parol or extrinsic evidence to show mistake in contract, see "Evidence," § 433. Results of experiments, see "Evidence," § 150.

(a) In an action on a benefit certificate, where defendant alleged that assured intended to suicide at the time he made application for membership, evidence to show that the suicidal purpose was due to a condition that had arisen after the date of the application was competent.—*Supreme Conclave, I. O. H., v. Miles*, 92 Md. 613, 48 Atl. 845, 84 Am. St. Rep. 528. [Cited and annotated in 8 L. R. A. (N. S.) 1125, on suicide of insured while sane as defense in absence of provision.]

(b) Fulfillment of warranties to pay premiums, furnish proofs of death, and the like, the party suing on the policy must aver and prove; but the defendant must aver and prove the falsity of statements of facts existing when the policy was issued as to health and habits of insured.—*Supreme Council of Royal Arcanum v. Brashears*, 89 Md. 624, 43 Atl. 866, 73 Am. St. Rep. 244. [Cited and annotated in 4 L. R. A. (N. S.) 637, on insured's duty to negative death or accident from excepted cause; in 11 L. R. A. (N. S.) 985, on statements as representations, though expressly denominated as warranties; in 23 L. R. A. (N. S.) 973, on conflict of laws as to insurance contracts.]

(c) Where a death may have been either accidental or suicidal, the burden of proving that insured came to his death by suicide is on the party alleging it, as the presumption is that a man will not take his own life.—*Supreme Council of Royal Arcanum v. Brashears*, 89 Md. 624, 43 Atl. 866, 73 Am. St. Rep. 244. [Cited and annotated, see *supra*.]

(d) Plaintiff was the beneficiary named in a certificate in a mutual benefit insurance association whose by-laws provided that the local lodge should, on the death of a member, furnish the supreme council, which issued the certificate, with proofs of death. The local lodge, in submitting the report of the death of plaintiff's husband, accompanied the same with a certificate that he committed suicide, signed by one as acting coroner. *Held*, in an action by plaintiff on the policy, that such certificate was not ad-

missible, as it was neither a part of the proof of death, nor was it a representation by plaintiff, but merely the expression of an opinion.—*Supreme Council of Royal Arcanum v. Brashears*, 89 Md. 624, 43 Atl. 866, 73 Am. St. Rep. 244. [Cited and annotated, see supra.]

§§ 820-822. (See Analysis.)

§§ 823-827. Trial.

(a) Where the question whether a member of an insurance order had waived the illegality of his expulsion, depended on parol evidence of facts and circumstances it should be determined by the jury.—*Dague v. Grand Lodge Brotherhood of Railroad Trainmen*, 111 Md. 95, 73 Atl. 735. [Cited and annotated in 52 L. R. A. (N. S.) 843, on conclusiveness of decisions of mutual benefit associations directly upon claims for benefits: and duty to exhaust remedies within association.]

(b) In an action on a benefit certificate, where defendant introduced evidence to show that assured intended suicide at the time he applied for membership, but the facts shown were not sufficient to establish such intention as a matter of law, an instruction that plaintiff was not entitled to recover if the jury found the facts set out and the fact of suicide was properly refused.—*Supreme Conclave, I. O. H. v. Miles*, 92 Md. 613, 48 Atl. 845, 84 Am. St. Rep. 528. [Cited and annotated, see supra, § 816.]

(c) The materiality and truth of representations made by insured are for the jury.—*Supreme Council of Royal Arcanum v. Brashears*, 89 Md. 624, 43 Atl. 866, 73 Am. St. Rep. 244. [Cited and annotated, see supra, § 816.]

(d) In an action on an insurance policy, where one of the defenses is a false statement by insured in his application in regard to his use of intoxicating liquor, evidence of one witness, who testified that he thought deceased was under the influence of liquor at a certain time within the preceding six months, because his face was flushed, but who, on cross-examination, admitted he did not see him drink, that he was rational, and that he could not detect any odor of whiskey about him, is too indefinite to justify a submission to the jury of the issue

of whether deceased had used alcoholic stimulants.—*Supreme Council of Royal Arcanum v. Brashears*, 89 Md. 624, 43 Atl. 866, 73 Am. St. Rep. 244. [Cited and annotated, see supra, § 816.]

(e) The application, which was made a part of a policy in a mutual benefit company, provided that the policy should not become effective until the first assessment had been paid. The policy provided that assessment notices would be regularly mailed, dated the first week day of every second month. Instruction 7, printed on the back of the policy, provided that a member not receiving his notice before the 10th of any assessment month should write inquiring why. Held that, where assured died on 28th of the first assessment month, and no assessment had been levied on the policy, there was no error in refusing to charge that no recovery on the policy could be had unless a first assessment had been actually paid during the life of the assured, and while he was in good health, "provided the jury find that, in the regular course of business, no assessment could have been levied before the death of assured."—*Globe Reserve Mut. Life Ins. Co. v. Duffy*, 76 Md. 293, 25 Atl. 227. [Cited and annotated in 4 L. R. A. (N. S.) 610, on effect of agent's inserting false answers to questions correctly answered by applicant; in 14 L. R. A. (N. S.) 280, on bad faith of assured as affecting estoppel of insurer by agent's knowledge to set up falsity of answers in application; in 16 L. R. A. (N. S.) 1242, on parol-evidence rule as to varying or contradicting written contracts, as affected by doctrine of waiver or estoppel of insurer; in 41 L. R. A. (N. S.) 506, 514, 515, on medical examiner as agent of insurer or insured.]

§ 828. Judgment.

§§ 829-832. Execution and enforcement of judgment.

*Cross-Reference.*

Lien on special funds, see ante, § 698.

§ 833. Appeal and error.

§ 834. Costs.

## INSURANCE COMMISSIONERS.\*

*Cross-Reference.*

See "Insurance," § 627.

## INSURGENTS.

*Cross-Reference.*

See "Insurrection."

\*Annotation: Words and Phrases, same title.

## INSURRECTION.\*

### *Scope-Note.*

[INCLUDES rising of a number of persons against civil authority for the purpose of preventing by force the execution of the law, or of forcibly overthrowing the government, and raising or attempting to raise seditious commotions for such purposes, although without open violence; nature and elements of the crimes of insurrection, sedition, revolt, rebellion, etc.; nature and extent of criminal responsibility therefor, and grounds of defense; status of insurgents, and protection and enforcement of rights in insurrectionary districts; proceedings for suppression of insurrection by civil authority, and prosecution and punishment of acts of insurrection, revolt, or rebellion, not constituting treason, and of seditious acts and practices, as public offenses.

[EXCLUDES suppression of insurrection by military power; effect of civil war, rights of insurgents as belligerents, and measures and acts in exercise of war powers, as confiscation, blockade, and other restrictions on commercial intercourse, prize, etc. (see "*War*") ; effect of insurrection, rebellion, or civil war on status, rights, and powers of insurrectionary states (see "*States*") ; acts of treason by individuals (see "*Treason*") ; seditious and treasonable conspiracies (see "*Conspiracy*") ; and mutiny against military or naval authority (see "*Army and Navy*") , or against authority of commander of merchant vessel (see "*Seamen*").

[For complete list of matters excluded, see cross-references, post.]

### *Analysis.*

- § 1. Nature and extent in general.
- § 2. Offenses.
- § 3. Civil status of insurgents and persons within insurrectionary districts.
- § 4. Protection and enforcement of rights within insurrectionary districts.
- § 5. Suppression of insurrection by civil authority.

### *Cross-References.*

- |  |  |
|--|--|
| <p>See "<i>War</i>."</p> <p>Acts of treason by individuals, see "<i>Treason</i>."</p> <p>Habeas corpus to release person arrested for aiding insurrection, see "<i>Habeas Corpus</i>," § 16.</p> <p>Power of courts to review determination of governor that state of insurrection exists,</p> | <p>see "<i>Constitutional Law</i>," § 78.</p> <p>Suspension of writ of habeas corpus in case of insurrection, see "<i>Habeas Corpus</i>," § 121.</p> <p>Test oath as condition precedent to maintenance of action, see "<i>Action</i>," § 10.</p> <p>Validity of proceedings of courts of Confederate States, see "<i>Courts</i>," § 60.</p> |
|--|--|

### *Annotation.*

- |  |   |
|--|---|
| <p>Power of governor, in exercise of power to suppress insurrection to authorize arrest and detention of persons without turning</p> | <p>them over to the civil authorities.—12 L. R. A. (N. S.) 979, note.</p> |
|--|---|

## INTELLECTUAL PROPERTY.

### *Cross-References.*

- See "*Copyrights*"; "*Literary Property*"; "*Patents*"; "*Property*," § 2.

## INTEMPERANCE.\*

### *Cross-Reference.*

- See "*Drunkards*."

## INTENDING.

### *Cross-Reference.*

- "*Knowing*" and "*intending*" as synonymous, see "*Animals*," § 100.

## INTENT.\*

### *Cross-References.*

- Affecting award of compensatory damages, see "*Damages*," § 57.
- As affecting alteration of instruments, see "*Alteration of Instruments*," § 2.
- Averments in affidavit for attachment as to intent of defendant, see "*Attachment*," § 111.
- Element of estoppel in pais, see "*Estoppel*," § 53.
- Evidence of intent in civil actions in general, see "*Adverse Possession*," §§ 85, 114; "*Assignments for Benefit of Creditors*," §§ 54, 138; "*Evidence*," §§ 64, 108, 118-128, 134-136, 151, 222, 269, 317, 461, 471, 472.

\*Annotation: Words and Phrases, same title.

Evidence of intent in criminal prosecutions in general, see "Adulteration," § 12; "Assault and Battery," § 83; "Breach of the Peace," § 7; "Criminal Law," §§ 312, 342, 365, 371, 390, 448; "Damages," § 89.

Form of action as depending upon intent of defendant in committing act, see "Action," § 30.

Instructions as to intent, see "Bribery," § 14; "Burglary," § 46.

Of defendant to defraud another person as defense to suit for cancellation of deed, see "Cancellation of Instruments," § 25.

Variance between allegation and proof as to intent, see "Burglary," § 28.

*Affecting or element of particular acts or transactions.*

See "Abandonment," § 3; "Adulteration," § 4; "Adverse Possession," § 11; "Alteration of Instruments," §§ 2, 11, 23; "Assault and Battery," §§ 3, 16; "Boundaries," § 3; "Contracts," §§ 14, 102, 147; "Dedication," § 15; "Deeds," § 93; "False Imprisonment," § 4; "Fraud," § 4; "Fraudulent Conveyances," §§ 9, 64-72, 155-171; "Gifts," § 15; "Libel and Slander," §§ 2, 83, 104, 131, 143; "Mortgages," § 99; "Nuisance," § 2; "Torts," § 4; "Trespass," § 2; "Usury," § 12; "Wills," § 72.

Abandonment of homestead, see "Homestead," § 162.

Abandonment of mining claim, see "Mines and Minerals," § 24.

Acquisition and occupancy of homestead, see "Homestead," § 31.

Acquisition of exempt personal property, see "Exemptions," § 9.

Acts of bankruptcy, see "Bankruptcy," § 57.

Advancements, see "Descent and Distribution," § 98.

Agreement of accord, see "Accord and Satisfaction," §§ 7, 11.

Annexation of personal to real property, see "Fixtures," § 4.

Assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 5.

Change of domicile, see "Domicile," § 4.

Charge of indebtedness on married woman's separate estate, see "Husband and Wife," § 164.

Conspiracy, see "Conspiracy," § 11.

Construction of constitutional provisions, see "Constitutional Law," § 13.

Construction of patent, see "Patents," § 157.

Construction of statutes, see "Statutes," §§ 181-186.

Construction of wills, see "Wills," §§ 439-444.

Contracts within statute of frauds, see "Frauds, Statute of," § 46.

Conversion, see "Trove and Conversion," § 3.

Conversion by bailee, see "Bailment," § 16.

Conveyance by husband, as fraudulent against wife, see "Husband and Wife," § 6.

Creation of partnership, see "Partnership," § 17.

Cruel treatment as ground for divorce, see "Divorce," § 27.

Delivery of deeds, see "Deeds," § 56.

Discharge of servant, see "Master and Servant," § 30.

Errors or defects in mechanic's lien claim or statement, see "Mechanics' Liens," § 157.

Establishment of highway by prescription, see "Highways," § 7.

Execution of power, see "Powers," § 33.

Fraud in assignment for benefit of creditors, see "Assignments for Benefit of Creditors," §§ 143-146.

Furnishing services or materials protected by mechanics' lien law, see "Mechanics' Liens," § 52.

Infringement of copyright, see "Copyrights," § 52.

Infringement of patent, see "Patents," § 227.

Infringement of trade-mark or trade-name, see "Trade-Marks and Trade-Names," § 55.

Injury to person insured against accident, see "Insurance," § 464.

In making entry as affecting interruption of adverse possession, see "Adverse Possession," § 47.

Intended departure as ground for attachment, see "Attachment," § 30.

Intended removal or disposition of property as ground for attachment, see "Attachment," § 45.

Intent not to pay as affecting validity of sale, see "Sales," § 44.

Intent of creditor in accepting part payment, see "Accord and Satisfaction," § 12.

Knowledge or belief of creditor in receiving preference as affecting right to prove claim, see "Bankruptcy," § 311.

Liability for unintended consequences of negligent act, see "Negligence," § 10.

Marks on election ballot, see "Elections," § 194.

Marriage settlements, see "Husband and Wife," § 31.

Merger on assignment of mortgage to owner of property, see "Mortgages," § 268.

Nature of instrument as bill of sale or mortgage, see "Chattel Mortgages," § 34.

Nature of instrument as deed or mortgage, see "Mortgages," § 32.

Notice or declaration of intent to claim adversely, see "Adverse Possession," § 32.

Of bankrupt in destroying books of account, see "Bankruptcy," § 409.

Of Chinese laborer in unlawfully entering the United States, see "Aliens," § 32.

Of debtor in making transfer, see "Bankruptcy," § 58.

Of grantee to hold for or convey to another, as creating resulting trust, see "Trusts," § 70.

Of laborer in taking note for wages as affecting waiver of lien, see "Agriculture," § 14.

Of Legislature governing construction of statutes, see "Statutes," §§ 180-186.

Of maker of note as to delivery, see "Bills and Notes," § 63.  
 Of occupant as affecting hostile character of possession, see "Adverse Possession," § 60.  
 Of occupant as to extent of possession, see "Adverse Possession," § 100.  
 Of occupant of property to claim hostile possession, see "Adverse Possession," § 58.  
 Of parties to transfer by bankrupt as affecting question of preference, see "Bankruptcy," § 166.  
 Of party as controlling construction of assignment, see "Assignments," § 72.  
 Of resident alien to become citizen as affecting right to hold property, see "Aliens," § 12.  
 Of witness, in making false statement, as affecting credibility, see "Witnesses," § 317.  
 Omission of child from provisions of will, see "Descent and Distribution," § 47.  
 Preferences by insolvent debtors, see "Assignments for Benefit of Creditors," § 108; "Bankruptcy," § 166; "Corporations," § 544; "Insolvency," § 61.  
 Promise to answer for debt or default of another, see "Frauds, Statute of," § 24.  
 Purchase on credit with intention not to pay as ground for attachment, see "Attachment," § 32.  
 Recording deed as delivery as affected by intent, see "Deeds," § 59.  
 Removal from homestead, see "Homestead," § 162.  
 Renting of sheep by lessee as showing intention to pass title, see "Animals," § 27.  
 Representations within statute of frauds, see "Frauds, Statute of," § 39.  
 Reservations in assignment for benefit of creditors, see "Assignments for Benefit of Creditors," § 86.  
 Revocation of will, see "Wills," § 170.  
 Sale of liquor to minor, see "Intoxicating Liquors," § 159.  
 Starting prairie fire, see "Fires," § 7.  
 To charge wife's separate estate, see "Husband and Wife," § 164.  
 To defraud creditors ground for attachment, see "Attachment," §§ 26-45.  
 To prefer creditor as element of assignment, see "Assignments for Benefit of Creditors," § 12.  
 To separate as element of desertion, see "Divorce," § 37.  
 To waive agister's lien, see "Animals," § 26.  
 To waive right to attachment, see "Attachment," § 48.  
 Transfers by debtors, see "Bankruptcy," § 180.  
 Unfair competition, see "Trade-Marks and Trade-Names," § 69.  
 Use of mails to defraud, see "Post Office," § 35.  
 Violation of injunction, see "Injunction," § 216.  
*Element of offenses.*  
 See "Abduction," § 1; "Abortion," § 1; "Arson," §§ 3, 19, 23, 29, 37; "Assault and Battery," §§ 49, 55-57, 75; "Bigamy," § 1; "Bribery," § 1; "Burglary,"

§§ 3, 19, 28, 32, 41; "Conspiracy," § 43; "Counterfeiting"; "Criminal Law," §§ 20-25, 312, 371, 390; "Disorderly Conduct," § 1; "Disturbance of Public Assemblage," §§ 1, 6; "Embezzlement," §§ 5, 27, 39, 44, 47, 48; "Embracery," §§ 1, 4; "Escape," § 9; "Extortion," § 5; "False Pretenses," §§ 5, 27, 38, 42, 49, 51; "Forgery," §§ 5, 27, 47; "Gaming," §§ 65, 86; "Homicide," §§ 9, 36, 37, 112, 128, 141, 145, 156-161, 230, 257, 286; "Incest," § 10; "Kidnapping," § 1; "Larceny," §§ 3, 29, 44, 57, 71; "Lotteries," § 23; "Malicious Mischief," § 1; "Mayhem," § 1; "Perjury," §§ 3, 20; "Rape," §§ 5, 16, 21, 39; "Receiving Stolen Goods," § 3; "Riot," § 1; "Robbery," § 3; "Threats," § 1.  
 Abandonment of wife by husband, see "Husband and Wife," § 302.  
 Allegations in indictment or information in general, see "Indictment and Information," § 88.  
 Allegations in indictment or information in prosecutions for particular crimes, see "Abortion," § 5.  
 Assault with intent to kill, see "Homicide," §§ 86, 88.  
 By prison officers, see "Prisons," § 10.  
 Carrying weapons, see "Weapons," § 7.  
 Common barratry, see "Champerty and Maintenance," § 9.  
 Illegal sale of food, see "Food," § 14.  
 Obstruction of highway, see "Highways," § 163.  
 Obtaining board or lodging from innkeeper, see "Innkeepers," § 16.  
 Of accused, indictment for removing landmarks, see "Boundaries," § 56.  
 Sale of intoxicating liquors, see "Intoxicating Liquors," § 131.  
 Sale of liquor to Indians, see "Indians," § 34.  
 Unlawful use of highway, see "Highways," § 186.  
 Variance between allegations and proof in general, see "Indictment and Information," § 177.  
 Violations of bankrupt act, see "Bankruptcy," § 408.  
 Violations of customs laws, see "Customs Duties," § 122.  
 Violations of liquor laws, see "Intoxicating Liquors," § 229.  
 Violations of regulation relating to articles of food, see "Food," § 20.

### INTENTIONALLY.\*

#### Cross-Reference.

Willfully construed as synonymous with intentionally, see "Animals," § 45.

### INTERCOURSE.\*

#### Cross-References.

See "Commerce."  
 Criminal conversation, see "Husband and Wife," §§ 340-354.  
 Sexual intercourse, see "Abduction"; "Adultery"; "Fornication"; "Lewdness"; "Rape"; "Seduction."

### INTERDICTION.

#### Cross-Reference.

See "Insane Persons."

\*Annotation: Words and Phrases, same title.

Digitized by Google











1



